

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 598 of 2019***{Arising out of order dated 05.12.2019 passed by the learned Single Judge in WPS. No. 10199 of 2019}*

- U.S. Agarwal S/o Late Shri R.C. Agarwal Aged About 57 Years Presently Posted As Principal, Iti Bhilai Durg, District Durg Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Secretary, Skill Development And Technical Education And Employment Department, Mantralaya, Mahanadi Bhawan Atal Nagar Nawa Raipur, District Raipur Chhattisgarh.
2. Director Directorate of Skill Development And Technical Education And Employment Department Indrawati Bhawan, Atal Nagar Nawa Raipur, District Raipur Chhattisgarh.
3. T.R. Tanwar Principal , Government ITI, Durg, District Durg Chhattisgarh.

---- Respondents

For Appellant	: Shri Syed Majid Ali, Advocate
For Respondents/State	: Shri Ghanshyam Patel, Government Advocate .

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per, P.R. Ramachandra Menon, Chief Justice****12/12/2019**

1. Interference declined by the learned Single Judge with regard to the challenge raised against the transfer of the Petitioner, posting him in a scheduled area, is brought up for interference by this Court.
2. Heard Shri Syed Majid Ali, the learned counsel for the Appellant as well as Shri Ghanshyam Patel, Government Advocate representing the State.
3. The sequence of events reveals that the Appellant was working as Principal at ITI Bhilai, District Durg. It is stated that during the period from 31.12.2012 to 14.06.2016, the Appellant was posted in a scheduled area, Jagadalpur. However, during the course of such service, on coming across

certain misconduct, the Appellant came to be suspended from the service and was remaining so for the period from 30.01.2013 to 14.06.2016. The suspension was later revoked and the period is stated as reckoned as duty for all purposes as per Annexure P/9 order dated 14.06.2016. Despite this, as per Annexure P/2 dated 20.08.2019, the Appellant has been transferred to ITI Vishrampuri, District Kondagaon which again is a scheduled area and hence the challenge, stating that this is in violation of Annexure P/4 guidelines/policy regarding transfer. The learned counsel submits that, by virtue of the guidelines/policy issued by the State, particularly, under 'Clause 2.1', the Petitioner having already posted and worked in a scheduled area, ought to not have been transferred again to the scheduled area; adding that there was so many other workers who have not even worked for a single day in the scheduled area. The learned Single Judge considered the matter and based on the submissions made by the Respondents to the effect that out of the above period, the Petitioner was under suspension for nearly 3½ years from 30.01.2013 to 14.06.2016 and hence the Petitioner/Appellant was not entitled to get the benefit of the policy as aforesaid; interference was declined and the writ petition was dismissed; which is put to challenge in this appeal.

4. During the course of hearing, it is stated that the Appellant, though under suspension, was very much available in the scheduled area and later when the service was declared as duty for all purposes as per Annexure P/9, it has to be deemed as having worked in scheduled area for the requisite term. Hence, whatever flows from Annexure P/4 guidelines/policy should be extended to Appellant as well.
5. We find it difficult to accept the said proposition. The policy issued by the State in respect of transfer is to extend benefit to the eligible lot. The

stipulation to effect that the persons who have served the State in the scheduled area need not be transferred to scheduled area again is with reference to the service rendered by them. Admittedly, in the case of the Petitioner/Appellant, after getting posting in the scheduled area, because of the course and conduct of the Petitioner himself, for which nobody else can be blamed, he was placed under suspension and remained so for nearly 3½ years. Though the said period was regularized later, treating it as service for reckoning the service benefits, it cannot be said that the Appellant had actually served the State, discharging the duties for which he was appointed. As such, the interference declined by the learned Single Judge warrants no interference. This is more so, since the Petitioner is holding a transferable post and he is bound to serve anywhere in the State as per the service conditions. That apart, the law has been declared by the Apex Court on many an occasion, that interference in transfer matters by the Court shall only be an exception, when the authority who issued the transfer order is having no power of competence or if the order is highly arbitrary and unconscionable and is a result of malafides. No such instance is pointed out and substantiated and hence, we do not find it as a fit case to call for interference. Appeal fails, it is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge