

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 10608 of 2019**

Subhash Sharma, S/o. Dhruva Kumar Sharma, Aged About 32 Years,
Presently Working As Teacher (L.B.) At Government Middle School,
Ghuthiya Block Navagarh, District - Janjgir – Champa, Chhattigarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through the Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District - Raipur Chhattisgarh.
2. Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District - Raipur Chhattisgarh.
3. Director, Public Instructions, Sanchalnalaya, Indravati Bhawan, Atal Nagar Raipur, District - Raipur Chhattisgarh.
4. Collector, Janjgir - Champa, District - Janjgir - Champa Chhattisgarh.
5. District Education Officer, Janjgir, District Janjgir - Champa Chhattisgarh

---- Respondents

For Petitioner : Mr. C. Jayant K. Rao, Advocate

For State : Ms. Akanksha Jain, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13.12.2019**

1. Grievance of the petitioner is that the petitioner was transferred from Govt. Middle School Ghuthiya, Navagarh to the Office of District Education Officer, Sakti and the same was subject of challenge in WPS No.5498 of 2019 wherein this Court on 30.07.2019 has passed the following orders :

"1. The grievance of the petitioner is that the petitioner has been transferred from Govt. Middle School, Ghuthiya, Navagarh to the Office of the District Education Officer, Sakti.

2. *Learned counsel for the petitioner submits that the petitioner is now posted at Middle Shcool, Ghuthiya where out of 4 sanctioned teachers only 3 teachers are working. The petitioner is a teacher of maths and the two other teachers who are left are of other subjects. He submits that as per the Right of Children to Free and Compulsory Education Act, 2009, one teacher in each subject should be in the school. He submits that if the petitioner is transferred, the post of maths teacher would be vacant.*

3. *Perused the documents as also the certificate issued by the Sarpanch and the School Management which shows that the petitioner is a teacher of maths and if he is transferred, no teacher will be left for maths.*

4. *Considering the facts of the case and the documents filed along with the petition, it is directed that the petitioner may make a representation to the Grievance Redressal Committee constituted by the State against the transfer within a period of 15 days from today and the Grievance Redressal Committee may decide the same within a further period of 30 days from the date of receipt of the representation. Till then the transfer in respect of the petitioner shall not be given effect to.*

5. *With the aforesaid observation, the writ petition stands disposed of.”*

2. It is contended that thereafter he made a representation before the Committee and this fact was raised that the petitioner was only Teacher in Mathematics and with transfer of petitioner to the District Education Office, no Teacher of Mathematics would be left out, which would be against the provisions of Right of Children to Free & Compulsory Education Act, 2009 (for short the “Act, 2009”). However, the same has not been considered and the representation has only been dismissed on the ground that the transfer order is passed on the administrative ground. Along

with this petition also, certain documents have been filed and Annexure P-4, one certificate signed by the Chairman, School Management Committee, would show that in case of transfer of the petitioner, only two Teachers would be left from the School at Ghuthiya. The Act, 2009 also purports that certain ratio of teacher & students are to be maintained. If it is case of the petitioner, he is only Teacher of Mathematics and with his transfer to other administrative office, no Teacher would be left in Mathematics, certainly the same is to be considered in terms of the Act, 2009. Simple on the ground that the transfer is on the administrative exigencies, the same cannot be upheld.

3. The Supreme Court in the case of ***Secretary and Curator, Victoria Memorial Hall Versus Howrah Ganatantrik Nagrik Samity and others {(2010) 3 SCC 732}*** has held thus in para 41 & 42 which are reproduced herein below:-

“41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of U P (2008) 3 SCC 172; SAIL Vs. STO (2008) 9 SCC 407; State of Uttaranchal Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana (2009) 3 SCC 258; Mohd Yusuf Vs. Fajj Mohammad (2009) 3 SCC 513; and State of H P Vs. Sada Ram (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be

supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.”

4. In view of the aforesaid fact, specific ground when have been raised that the transfer of the petitioner to other office disturbed the students-teacher ratio, which is required as per the Act 2009, certainly it is required to be considered. Therefore, it is remanded back to the Grievance Redressal Committee to reconsider the same in view of the grounds raised by the petitioner and decide the same by a speaking order, whether transfer of the petitioner would change the people-teacher ratio as required under the Act of 2009 or not ? The said exercise may be carried out within a period of 60 days from the date of receipt of a copy of this order. Till then the transfer of the petitioner shall not be given effect to.
5. With the aforesaid observation, the writ petition stands disposed of.

**Sd/-
(Goutam Bhaduri)
Judge**