

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 76 of 2020**

(Arising out of order dated 13.12.2019 passed by learned Single Judge in WPS No.8551/2019)

- Ganesh Ram Thakur, S/o Late Dhan Singh Thakur, aged about 60 years, Occupation Service Presently Working as Chief Executive Officer, Janpad Panchayat Marwahi, District Bilaspur, R/o Block Colony, Marwahi, District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, through Secretary, Schedule Caste and Schedule Tribal Development Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Raipur (CG)
2. Secretary, Department of Animal Husbandry and Dairying, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, Raipur (CG)
3. Collector, Bilaspur, District Bilaspur Chhattisgarh.
4. Zila Panchayat, Bilaspur through Its Chief Executive Officer, Zila Panchayat, Bilaspur (CG)
5. Chief Executive Officer, Zila Panchayat, Bilaspur (CG)
6. Project Administrator, Unified Tribal Welfare Project, Gorella, District Bilaspur (CG)
7. M.K. Yadav, Assistant Veterinary Doctor, Department of Animal Husbandry and Dairying and Assistant Project Officer, Marwahi, District Bilaspur (CG)

---- Respondents

For Appellant	:	Mr. Gautam Khetrpal, Advocate
For Respondent-State	:	Mr. Sudeep Agrawal, Dy. Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****Order On Board****Per Parth Prateem Sahu, J****20/10/2020**

1. Challenge in this writ appeal is to the order dated 13.12.2019 passed by the learned Single Judge in WPS No.8551/2019 dismissing writ petition preferred by petitioner/appellant against order dated 11.10.2019.

2. Facts relevant for disposal of this case are that petitioner/appellant was posted as Chief Executive Officer, Janpad Panchayat Marwahi. Respondent No.5 vide order dated 11.10.2019 posted the petitioner/appellant in the office of Project Administrator, Integrated Tribal Welfare Project, Gaurela. This order was put to challenge by petitioner/appellant in a writ petition on the ground that respondent No.5 has no authority to transfer petitioner/appellant and the said order has been passed only to accommodate respondent No.7, who is neither employee of the Scheduled Caste & Scheduled Tribe Welfare Department nor the Panchayat & Rural Welfare Department. The order passed is malice in law.
3. Learned Single Judge upon considering the submissions made by learned counsel for petitioner/appellant as also taking into consideration the documents placed on record, dismissed the writ petition observing that posting/transfer order of petitioner has been issued on administrative exigency for proper administration of work.
4. Mr. Khetrapal, learned counsel for appellant submits that the learned Single Judge has not considered the ground that appellant being Class-II Gazetted Officer is under the control of the State Government and respondent No.5 does not have any authority to transfer petitioner/appellant. He also submits that the State Government vide Circular dated 21.8.2017 issued specific direction restraining transfer/posting of the Chief Executive Officers, Janpad Panchayat within District to some

other office. He points out that respondent No.7, who has been posted as Chief Executive Officer, Janpad Panchayat, Marwahi was an employee of other department, he was repatriated to his parent department but again he has been brought into his place, which clearly shows that appellant has been transferred only to accommodate respondent No.7.

5. Per contra, Mr. Agrawal, learned Deputy Advocate General representing the State submits that submissions of learned counsel for appellant are not correct. The order dated 11.10.2019 (Annexure P-1) is not a transfer order rather it is a posting order of appellant from one office to another office of the same Department within District. He further submits that appellant as Chief Executive Officer, Janpad Panchayat Marwahi has already completed his tenure for consideration of his transfer/posting to some other office. There are several complaints against petitioner/appellant with regard to discharge of his official responsibility and execution of work of several schemes of the State Government. Upon receiving complaints, respondent No.5 after obtaining approval from the District Collector, has posted the petitioner/appellant in the office of respondent No.6, which cannot be termed as transfer. There is no malafide against the appellant and there is no intent of respondent No.5 to place respondent No.7 only as Chief Executive Officer, Janpad Panchayat Marwahi in place of appellant. He further contended that during pendency of writ petition, one Shri Nand Kumar Manjhi, In-charge Chief

Executive Officer, Janpad Panchayat Chhura, District Gariyabandh has been transferred and posted as In-charge Chief Executive Officer, Janpad Panchayat Marwahi and appellant has been transferred from the office of Chief Executive Officer, Janpad Panchayat Marwahi to the office of Assistant Commissioner, Tribal Welfare, District Gaurela Pendra vide order dated 21.9.2020. Subsequently, respondent No.7 has been transferred to the office of Chief Executive Officer, Jila Panchayat Bilaspur.

6. We have heard learned counsel for the parties and perused the record.
7. Date of posting i.e. 30.1.2016, of petitioner/appellant as Chief Executive Officer, Janpad Panchayat Marwahi is not in dispute. Appellant has completed more than three years as Chief Executive Officer, Janpad Panchayat Marwahi prior to the date of his posting in the office of Project Administrator, Integrated Tribal Development Project, Gaurela. From perusal of the order dated 11.10.2019, which has been projected by appellant to be an order of transfer, it is clear that it is simply an order of posting and not transfer. This order of posting of petitioner/appellant has been passed by respondent No.5 after obtaining approval from respondent No.3-Collector, District Bilaspur. Further, the order reads that arrangement of posting of person named therein is for proper implementation of welfare schemes of the Rural Development floated by the State Government from time to time. It does not mention that appellant has been

transferred. From perusal of document Annexure A-3 i.e. Sr. No.8 (iii) of Schedule-II of CG Scheduled Tribes and Scheduled Castes Development (Gazetted Services Recruitment) Rules, 2006, it is apparent that post of Assistant Project Administrator is a promotional post of Chief Executive Officer. Appellant has been posted by respondent No.5 on a higher post than the post which he was holding i.e. Chief Executive Officer, that too after taking approval from respondent No.3.

8. In view of above, when order Annexure P-1 is only an order of posting wherein it is specifically mentioned that this arrangement is made only to implement welfare schemes of the State Government in a proper manner, we do not find any force in the submission of learned counsel for appellant that respondent No.5 does not have any authority to transfer appellant. Hence, it is hereby repelled.

9. As regards another submission made by learned counsel for appellant with regard to re-posting of respondent No.7 as Chief Executive Officer, Janpad Panchayat Marwahi after his repatriation. This Court has passed a detailed order on 25.8.2020, which is extracted below for ready reference:-

“.....Shri Goutam Khetrapal, learned counsel for the appellant submits that allegation levelled against the appellant in the reply submitted by the respondent/State with regard to several complaints filed against the appellant while working as Chief Executive Officer, Janpad Panchayat-Marwahi is not correct. He submits that only one complaint has been filed against him and that too anonymous and apart from it there is no other allegation or complaint on his working. He submits that

respondent No.7 (M.K. Yadav) who has been transferred vide Annexure P/2 in his place of posting ie the Chief Executive Officer, Janpad Panchayat-Marwahi, is illegal. Respondent No.7 is an employee of the Panchayat Department and not of the office which comes under the Scheduled Castes and Scheduled Tribes Welfare Department. He further submits that vide order dated 12.06.2019 services of respondent No.7 were repatriated by the Collector but even thereafter respondent No.7 has been shown to be transferred.

Shri Chandresh Shrivastava, the Learned Deputy Advocate General appearing on behalf of the State submits that pleadings made in reply are correct. Respondent No.7 was earlier posted in place of the appellant, when the appellant was on medical leave. The smooth function of the office of Janpad Panchayat is very important as he is the superior officer in the block for all village panchayat in its territorial jurisdiction and is having an obligation to implement the scheme of Panchayat Department by the Janpad Panchayat Officer, Marwahi. He further submits that services of respondent No.7 have been taken back and he has been posted to officiate the charge of the Chief Executive Officer, Janpad Panchayat-Marwahi looking to his efficiency. It is also submitted that appellant is holding a transferable post and he has already completed the period for consideration of his transfer to some other place from the office of Janpad Panchayat- Marwahi. He cannot claim as a matter of right to remain posted at the same place for indefinite period.

So far as submission made by the learned counsel for the State that the appellant does not have any right to claim posting at one place is concerned, there is no dispute on it but what pinches the mind of this Court is that when once respondent No.7 has been repatriated to his parent department by order of the Collector on 12.06.2019, then how the same person ie respondent No.7 is again posted in the office of Janpad Panchayat- Marwahi as Chief Executive Officer and why not the appellant is replaced by any other employee of same department. If the transfer of appellant is due to some administrative exigencies, then some other employee of the same department could be posted to hold the charge of Chief Executive Officer at Janpad Panchayat-Marwahi.

At this stage, learned counsel for the State

prays for a short time to seek further instruction in the matter and to make submissions.

As prayed, post it for further consideration on 08.09.2020.”

10. In view of observation made in the order dated 25.8.2020 passed by this Court, the respondent authority has passed the order dated 21.9.2020 (Annexure R-7) whereby officiating Chief Executive Officer, Janpad Panchayat Chura has been posted as officiating Chief Executive Officer, Janpad Panchayat Marwahi. Another order (Annexure R-8) has been passed on 24.9.2020 by the office of Janpad Panchayat Marwahi relieving respondent No.7 to give joining in the office of Chief Executive Officer, Janpad Panchayat Bilaspur. In furtherance of posting of appellant vide Annexure P-1, the State Government has issued an order of transfer of appellant from Janpad Panchayat Marwahi to the office of Assistant Commissioner, Tribal Welfare, District Gaurela Pendra on 21.9.2020.

11. In view of above facts and circumstances of case and subsequent events brought on record, we do not find any tenable ground warranting interference in the impugned order. The appeal being devoid of merit is liable to be dismissed and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge