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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 180 of 2020**

*{Arising out of order dated 08.01.2020 passed by the learned Single Judge in
WPS No.47 of 2020}*

- Rajesh Kumar Shrivastava S/o Late Shri A.K. Shrivastava Aged About 57 Years Occupation- Service, Working As Joint Director, Office Of Joint Director, Treasury, Account And Pension, Bilaspur, Chhattisgarh.

----Appellant**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Finance, Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Joint Secretary, Finance Department, Mantralaya Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
3. Bilaspur University (Now Known As Atal Bihari Vajpayi University) Through Its Registrar, Atal Bihari Vajpayi University, Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
4. Director, Treasuries, Account And Pension Indravati Bhawan, Nava Raipur, Atal Nagar, District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
5. Bhavesh Kumar Dubey Finance Officer, Bilaspur University, Bilaspur (Now Known As Atal Bihari Vajpayi University), District Bilaspur, C.G., District : Bilaspur, Chhattisgarh

---- Respondents**WPS No. 7063 of 2019**

- Rajesh Kumar Shrivastava S/o Late A. K. Shrivastava Aged About 57 Years Working As Joint Director At Office Of Joint Director, Treasury Account And Pension Bilaspur, District - Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Finance, Mantralaya, Mahanadi Bhavan, Nava Raipur, District - Raipur, Chhattisgarh.
2. Secretary Department of Higher Education, Mantralaya, Mahanadi Bhavan, Nava Raipur, Atal Nagar, District - Raipur, Chhattisgarh.
3. Bilaspur University (Now Known As Atal Bihari Vajpayi University) Through Its Registrar, Atal Bihari Vajpayi University, Bilaspur, District - Bilaspur, Chhattisgarh.
4. Bhavesh Kumar Dubey Finance Officer, Bilaspur University, Bilaspur (Now Known As Atal Bihari Vajpayi University), District - Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	: Shri R.S. Marhas, Advocate.
For Respondent/State	: Shri Gagan Tiwari, Deputy Government Advocate.
For Respondent No.3/University	: Shri Sudeep Agrawal, Advocate

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

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

05.03.2020

1. The issues projected in the appeal arising from WPS No.47 of 2020 are closely interlinked with those brought on record by the same Petitioner in WPS No. 7063 of 2019 as well.
2. The crux of the dispute is with regard to the transfer/deputation of the Appellant/Petitioner ordered by the authorities of Government to serve in the 3rd Respondent-University which was stated as passed without the consent/concurrence of the Appellant/Petitioner.
3. Heard Shri R.S. Marhas, the learned counsel appearing for the Appellant, Shri Gagan Tiwari, the learned Deputy Government Advocate for the

State and Shri Sudeep Agrawal, the learned counsel appearing for the Respondent No.3/University.

4. The sequence of events shows that the Appellant while working as the Joint Director, Treasury Accounts and Pension in Bilaspur was ordered to serve in the 3rd Respondent/University as per the order dated 23.08.2019. Pointing out that the said order was virtually amounting to deputation and that the Petitioner not being an employee of the University and that such a positing was ordered without the consent of the Petitioner, it was sought to be challenged by filing WPS No. 7063 of 2019, seeking to have it set aside and to hold that the Petitioner cannot be transferred to the Bilaspur University without his consent.
5. When the matter came up for consideration before the learned Single Judge on 09.09.2019, the following interim order was passed:

“The petition is admitted for hearing.

State Counsel accepts notice on behalf of respondents No. 1 & 2. Mr. Sudeep Agarwal, Adv. accepts notice on behalf of respondent No. 3. Mr. Varun Sharma for the respondent No. 4, hence issuance of notice 1, 2, 3 & 4 stands dispensed with.

Let reply be filed to the writ petition as well as to the interim application i.e. I. A. No. 01/2019 within 7 days from today.

Counsel for the petitioner submits that the service condition of the petitioner are governed by the University Act 1973 and also the Service Rules & Regulations applicable upon the employee of the University i.e. the University Service Rule 1993 and the transfer now is being made contrary to these rules.

Considering the facts & circumstances of the case, let reply of all the respondents be filed both on merits as well as I.A. No. 01/2019.

List this case in the week commencing 01.10.2019.

Meanwhile, the effect and operation of the

impugned order shall remain stayed so far as petitioner is concerned.

Counsel for the respondent No. 3 submits that he has also given his joining. Respondent/ State would be at liberty to take appropriate steps redressing grievance of either of the parties till the next date of hearing.”

6. It is the case of the Appellant/Petitioner that by virtue of the interim order passed as above, the Appellant was continuing as the Joint Director, Treasury Accounts and Pension, Bilaspur. However, considering the submissions made on behalf of the 4th Respondent (wrongly mentioned as 3rd Respondent, who is the University) that he had already joined pursuant to the order dated 23.08.2019 against the post of Joint Director, Treasury Accounts and Pension (which was to be vacated pursuant to the very same order, whereby the Petitioner/Appellant was transferred to the University), the learned Single Judge observed that the State would be at liberty to take appropriate steps for redressing the grievance of either of the parties.
7. While so, Annexure A/4 order dated 03.10.2019 came to be passed by the Joint Secretary, Department of Finance, whereby the Petitioner/Appellant was shifted and posted in the office of Director, Treasury Accounts and Pension, Indrawati Bhawan, Atal Nagar, Nava Raipur. This according to the Petitioner/Appellant was quite contrary to the direction given by the learned Single Judge on 09.09.2019, whereby the transfer was stayed. In the said circumstances, alleging contumacious action on the part of the Respondent, Contempt Petition (C) No. 951 of 2019 was filed; which however, came to be dismissed as per Annexure A/5 order dated 16.12.2019, observing that the Appellant had conceded before the Court that the Respondent authorities had not compelled him to go and join the service in the University and hence there was no violation of the direction

given. Met with the situation, Annexure A/4 dated 03.10.2019 was subjected to challenge by filing WPS No. 47 of 2020.

8. When the matter came up for consideration before the learned Single Judge, the factual sequence was taken note of. It was submitted on behalf of the State that, it was to serve the stalemate that the proceedings under challenge were issued, accommodating the writ Petitioner in the office of the Director, Treasury Accounts and Pension, Indrawati Bhawan, Atal Nagar, Nava Raipur, mentioning that a subsequent proper posting order would be passed. This was taken note in paragraph 3 of the judgment and in the said circumstances, WPS No. 47 of 2019 was dismissed as per order dated 08.01.2010. The operative portion of the said judgment as contained in paragraph 4 reads as follows:

“4. In view of the said submission made by the State that the petitioner has been directed to report to the office of the Director, Treasury Account & Pension, Raipur wherein subsequent orders would be passed. Taking into fact that the petitioner is in Bilaspur and working in different capacity either as Finance Officer at Bilaspur University and subsequently in the Treasury office and when the Government felt need that the transfer of the petitioner would be necessary in the department itself and unless prima facie it is shown that the transfer is tainted with malafide, interference of the court is uncalled for. The order dated 3/10/2019 instead assign the reason that why the petitioner is being posted at office of the Director, Treasury Account & Pension, Raipur. Consequently, it is the prerogative of the State and the transfer being incident of service, I do not find any merit in this case to admit the same. The petition is devoid of merit and it is accordingly dismissed.”

9. The Petitioner has come up before this Court, challenging the course and proceedings pursued by the learned Single Judge, pointing out that the interim order passed by the learned Single Judge in WPS No. 7063 of

2019 still continues and hence the grievance. In view of the pendency of the said matter and the close connection between the issues, we found it appropriate to have both the matters clubbed together and accordingly, WPS No. 7063 of 2019 was also tagged alongwith this appeal and both the matters are heard accordingly.

10. Shri Gagan Tiwari, the learned counsel appearing for the State submits that WPS No. 7063 of 2019 has virtually become infructuous; insofar as the grievance projected therein was against the transfer and positing of the writ Petitioner from the office of the Joint Director, Treasury Accounts and Pension, Bilaspur to the service of the Bilaspur University without his consent. By virtue of the interim order passed by the learned Single Judge on 09.09.2019, granting an interim stay, the same was given effect to and subsequently by virtue of the liberty granted to the Government to redress the grievance of either parties i.e. the Petitioner and also the 4th Respondent; the Petitioner was accommodated in the Office of Director, Treasury Accounts and Pension, Indrawati Bhawan, Atal Nagar, Nava Raipur. Admittedly, the Petitioner was never made to serve in the University and as such, the relief stands satisfied and nothing survives to be considered in the said writ petition.
11. Shri R.S. Marhas, the learned counsel for the Appellant submits that the posting given at Raipur was only temporary arrangement in view of the submissions made on behalf of the Government before the learned Single Judge, when WPS No. 47 of 2020 was finalized. The factual position can be discernible from paragraph 3 of the said judgment which is reproduced for convenience or reference:

“3. Learned State counsel vehemently opposes the argument. It is contended that the petitioner is

placed at Bilaspur since 2009 and as per requirement of the official exigency the petitioner has been directed to report to the office of Director, Treasury Account & Pension, Raipur wherein subsequent posting order would be passed.”

12. On seeking to clarify the position as on date, the learned counsel representing the State submits that no further orders have been passed and that it was only because of the pendency of these matters. The learned counsel submits that appropriate orders will be issued as expeditiously as possible.
13. In the above circumstance, we close both these appeal and WPS No. 7063 of 2019, as nothing further requires to be adjudicated, but, for directing the Competent Authority to pass appropriate orders as assured to be passed based on the submissions made before the learned Single Judge, as taken note of in paragraph 3 of the judgment under challenge. It shall be done as expeditiously as possible, at any rate, within one month from the date of receipt of certified copy of this judgment.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge