HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1381 of 2020

- Sandeep Gorla S/o Late Ramaiya Gorla Aged About 32 Years Working As Rural Agriculture Extension Officer At Jagdalpur, District- Baster

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Agriculture Development And Formar Welfare And Bio-Technology Department, Mahanadi Bhawan, Atal Nagar, Nawa Raipur Chhattisgarh.
2. Dy. Director Agriculture, Jagdalpur, District- Baster Chhattisgarh.
3. Sub-Divisional Officer Jagdalpur, District - Baster, Chhattisgarh.

----Respondents

For petitioner – Shri Somkant Verma, Advocate.
For State- Ms. Richa Shukla, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

02/03/2020

1. This is the second round of litigation. The petitioner was transferred from Jagdalpur to Dantewada which was subject of challenge in WPS No.6814 of 2019 wherein this court on 30/08/2019 has passed the following order:-

> "1.The challenge in the present Writ Petition is to the order Annexure P-1 dated 22.08.2019, whereby the petitioner has been transferred from Jagdalpur to Dantewada.
> 2. The challenge of the present petitioner is on the ground that the petitioner is being transferred from one scheduled Area to another scheduled Area. The contention of the petitioner is that for the last 7 years the petitioner has been working in a scheduled area and as per the transfer policy of the State Government, he should not had been transferred to another scheduled area but instead the respondents infact transferred him to a far more remote area which is a core scheduled area. Which is in violation of the transfer policy of the State Government.
> 3. Given the fact, let petitioner make a detailed

representation to the respondents within a period of 10 days from today and on receipt of the representation, the respondents shall take a decision within a period of 30 days considering the policy of the State Government is concerned. While considering the same the State authority would also consider the policy of the State Government dated 03.06.2015.

4. Till the representation of the petitioner is decided, the effect and operation of the impugned order Annexure P-1 shall remain stayed so far as the petitioner is concerned.

5. With the aforesaid observations, the writ petition stands disposed of.

2. Learned counsel for the petitioner would submit subsequently the representation having been filed the same has been decided on the ground that the transfer do not breach any condition of transfer policy, however, the petitioner has already served more than 7 years in the scheduled area and as per the transfer policy having spent more than 7 years in the schedule area the petitioner should have been posted in non schedule area. However, he is being sent to core schedule area i.e. Dantewada. He further contends that while deciding the representation no whisper has been made as to how it satisfy the transfer policy and instead in the mechanical manner the transfer order has been cancelled.

3. Learned State counsel opposes the argument and further submit that transfer being incident of service the State is within its right to cancel the representation.

4. Perused the earlier order of this Court and in the earlier order this Court has given liberty to the petitioner to file a representation and to decide the same as per the transfer policy dated 03.06.2015. The transfer policy is also placed on record.

5. When the decision of the representation Annexure P-1 is read in between lines it does not whisper any answer to the ground raised by the petitioner instead as an omnibus observation is made that the transfer do not flout any conditions of transfer policy. The earlier order passed by this

court would also be relevant. When there is specific direction have been passed by this court and the transfer policy clause 2.2 purports that the person who is placed in the scheduled area he should not be removed till a complaint is received against him and in case complaint is received in pursuant thereto government may decide to place him in other place of posting would be applicable in absence of any complaint. Clause 2.1 of the transfer policy also purports that normally a person who has rendered service in the scheduled area should be normally be placed out of the scheduled area or core scheduled area. The order rejecting representation do not take into any sweep the grounds raised in the representation.

6. 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 40, 41 & 42 which are reproduced herein below:-

> “40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [Vide State of Orissa Vs. Dhaniram Luhar AIR 2004 SC 1794; and State of Rajasthan Vs. Sohan Lal & Ors. (2004) 5 SCC 573].
>
> **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. Faij 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."

7. Clause 2.1 and 2.2 are reproduced hereunder:-

"2.1 दुर्गम अनुसूचित क्षेत्र में कम से कम दो वर्ष अथवा सामान्य अनुसूचित क्षेत्र में तीन वर्ष तक पदस्थापना की जाए। अनुसूचित क्षेत्र में रिक्त पदों की उपलब्धता एवं शासकीय सेवक द्वारा अनुसूचित क्षेत्र में की गई सेवा अवधि के अनुसार उसकी पदस्थापना गैर अनुसूचित क्षेत्र में करने पर विचार किया जाए।

2.2 जो शासकीय सेवक स्वेच्छा से अनुसूचित क्षेत्र में रहना चाहता हो, उसे वहां से तब तक न हटाया जाए, जब तक कि उसके विरूद्ध प्राप्त किसी शिकायत पर विभाग ने उसे प्रशासनिक आधार पर हटाने का निर्णय न लिया गया हो।"

8. Taking into such fact when the transfer policy is translated into the order of representation it does not satisfy the answer to the policy. In view of this when certain transfer policy exist and the specific grounds have been raised that the petitioner has served more than 7 years in the scheduled area then in such case this has to be given a weightage as otherwise the persons who are posted in the non-scheduled area shall never be put in exchange and a particular employee may spent the entire service carrier in scheduled and core scheduled area which obviously is not the spirit of the transfer policy.

9. In a result, Annexure P-1 prima facie do not satisfy to the fact that

the transfer has been affected according to the policy is set aside. It is being remitted back to the Secretary who has decided the representation to reconsider the transfer of the petitioner and decide the case of the petitioner within an outer limit of six months. Till then the petitioner's transfer shall not be given effect to.

10. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

Jyoti