

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3101 of 2020**

- Chamruram Jaiswal, S/o Shri Kalharam Jaiswal, Aged About 53 Years Presently Working As Assistant Teacher (L.B.) Government Primary School Karidongri, Block Lormi, District Mungeli Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through - The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District - Raipur Chhattisgarh
2. Collector, Mungeli, District Mungeli Chhattisgarh
3. District Education Officer, Mungeli, District Mungeli Chhattisgarh
4. Block Education Officer, Lormi, District Mungeli Chhattisgarh
5. Ashok Kumar Ghritlahre, Head Master, Government Primary School, Nawagaon (Th), Block Lormi, District Mungeli Chhattisgarh

---- Respondents

For Petitioner : Shri CJK Rao, Advocate

For Respondents/State : Ms. Akanksha Jain, Dy. GA

Hon'ble Shri Justice Goutam Bhaduri**Order****11/08/2020**

1. Heard.
2. This is the second round of litigation. Earlier the petitioner was transferred from Government Primary School, Karidongari, Block Lormi, District Mungeli to Government Primary School, Nawagaon (Th) Block Lormi, District Mungeli, which was subject of challenge in WPS No.5849 of 2019 , wherein this Court on

07.08.2019 has passed the following order:-

“The challenge in the present writ petition is to the order Annexure P-1 dated 12.07.2019 whereby the services of the petitioner have been transferred from Govt. Primary School, Karidongri, Block Lormi, District Mungeli to Govt. Primary School, Nawagaon (Th) Block Lormi, District Mungeli.

2. Without entering into the merits of the case, counsel for the petitioner prays that the petitioner may be permitted to make a representation to the respondents and the respondents in turn may be directed to decide the same as expeditiously as possible.
 3. Not opposed.
 4. Accordingly, the instant writ petition stands disposed off with liberty to the petitioner, if he so chooses, may prefer a detailed representation to the respondents. Considering the fact that it is a case of transfer, the respondents may decide it as expeditiously as possible as per the rules.”
3. Learned counsel for the petitioner would submit that if the petitioner is transferred from the current school wherein he is imparting education then under the Right of Children to Free and Compulsory Education Act, 2009 (for short 'the Act, 2009') which has a statutory application, the teacher-student ratio would be affected as there are more than 100 students in the school and as per the Act, 2009, one Headmaster + 5 teachers should be available in the school when more than 100 students exist and with the transfer of the petitioner three teachers would be left in school which would defeat the purpose of the Act, 2009, therefore, the transfer of the petitioner cannot be made.
 4. On the other hand learned State counsel opposes the arguments and would submit that the petitioner is attached with the school since 2010 vide Annexure P-3 and already three teachers for the arts stream are existing in the school, therefore, the petitioner has been transferred from Government Primary School, Karidongri, Block Lormi, District Mungeli to Government Primary School,

Nawagaon (Th), Block Lormi, District Mungeli.

5. I have heard learned counsel for the parties and perused the documents.
6. The transfer of the petitioner from Government Primary School, Karidongri, Block Lormi, District Mungeli to Government Primary School, Nawagaon (Th), Block Lormi, District Mungeli is in the same block i.e. Lormi. What are the other existing scenario of the teacher-student ratio in the other blocks in schools unless it is placed before the Court, the submission of the petitioner cannot be appreciated. If unilateral application is made of the Act, of 2009, then in such case there may be school where the school itself may be required to be closed or to be merged with other school. The ground reality as existing cannot be given a go-by. Furthermore, under the Act, 2009 to establish the fact that there are 135 students in the school wherein the petitioner is attached, it is to be established by the relevant documents. Only the vague statement has been made, which cannot be accepted considering the fact that the petitioner is attached in the school since 2010. It is for the Government to implement the Act, of 2009 according to the exigencies, circumstances and the available infrastructure which is prevailing in a particular block/schools. It is well settled law that the transfer of a Government Servant appointed to a particular cadre of transferable post from one place to the another is an incident of service, which cannot lightly be interfered with by Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the policy of transfer which causes serious prejudice.
7. The petition has no merit. It is accordingly dismissed.

Sd/-
Goutam Bhaduri
Judge