

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 329 of 2020**

*{Arising out of order dated 16.07.2020 passed by the learned Single Judge in Writ
Petition (S) No. 2761 of 2020}*

- Suresh Kumar Banjare, aged about 52 years, S/o Shri Kohal Singh Banjare, presently working as Head Master Government Primary School, Tilkapara, Block-Nawagarh, District Bemetara (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh, Through its Secretary, Department of Education, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. Director, Directorate Education Department, Indrawati Bhawan, Atal Nagar, District-Raipur (Chhattisgarh)
3. District Education Officer, District Bemetara (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Vinay Pandey, Advocate.
For Respondent/State	:	Shri Vikram Sharma, Deputy Government 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****21.08.2020**

1. Interference declined by the learned Single Judge in interdicting the impugned order passed by the 1st Respondent rejecting the claim to set aside the transfer of the Petitioner, is put to challenge in this appeal.
2. Heard Shri Vinay Pandey, the learned counsel appearing for the Appellant and Shri Vikram Sharma, the learned Deputy Government Advocate representing the State.
3. The sequence of event reveals that the Appellant who was working as the Head Master in the Government Primary School, Tilkapara, Block-Navagarh, District

Bemetara (C.G.), was transferred to the Government Primary School, Sankara, Berla District vide Annexure A/3 order dated 01.10.2019. This was sought to be challenged by filing Writ Petition (S) No. 8767 of 2019, pointing out that the wife of the Petitioner was also serving the State Government and further that the Appellant/writ Petitioner was serving as an office bearer (District President) of the Chhattisgarh Pradesh Shikshak Sangh and hence was not liable to be transferred contrary to the terms of the transfer norms.

4. The above writ petition was disposed off by a learned Single Judge of this Court as per Annexure A/4 verdict dated 23.10.2019 with liberty to the writ Petitioner to file a representation and directing the Respondent concerned to have the same considered and finalized, simultaneously ordering to keep the transfer in abeyance till the proceedings were finalized, as above.
5. According to the Appellant, pursuant to the direction given by the learned Single Judge, Annexure A/5 representation was preferred on 02.11.2019 but it was not acted upon for a quite long time. All of a sudden, Annexure A/6 order dated 25.06.2020 came to be passed, whereby the representation preferred by the Appellant was rejected in a mechanical manner and thereafter he was relieved from the post as per Annexure A/7 order dated 09.07.2020.
6. This made the Appellant to approach this Court once again by filing Writ Petition (S) No. 2761 of 2020. Observing that the Appellant/writ Petitioner was holding a transferable post; that the transfer was an incidence of service and further that no arbitrariness or malafides was substantiated, interference was declined and the writ petition was dismissed as per judgment dated 16.07.2020; correctness of which is challenged in this appeal.
7. The learned counsel for the Appellant submits that the rejection of the representation preferred by the Appellant is without proper application of mind and without any reference to the relevant norms in Annexure A/8 transfer policy.

The said policy clearly provides that, if both the husband and wife are serving the Government, they are to be accommodated in the same place. Further, in the case of office bearers of the Staff Association, transfer is to be avoided, which was never given effect to in the case of the Appellant, despite his functioning as the President of the Chhattisgarh Pradesh Shikshak Sangh. The order rejecting the representation has been passed quite in a mechanical manner without given any reasons and hence, it ought to have been interdicted by the learned Single where the Court has gone wrong and hence the challenge.

8. Shri Vikram Sharma, the learned counsel representing the State submits that there is absolutely no merit or bonafides in the case put up from the part of the Appellant. The verdict passed by the learned Single Judge in the earlier round of litigation vide Annexure A/1, dated 16.07.2020, was given full effect to and the Appellant/writ Petitioner was retained till the grievance projected in the representation was considered and finalized. On considering the grievance projected therein, it was found that it is not possible anymore to retain the Appellant in the same station and that the transfer has been ordered in view of the administrative exigencies. The learned counsel also pointed out that the transfer of the Appellant was effected only from one Block to another Block, which is situated in the same District and that the distance between the two places is only about 26 KMs. The Appellant is holding a transferable post and in the transfer policy, it has been clearly provided that the concessions mentioned therein cannot be claimed as matter of right. It is brought to the notice of this Court that the Appellant has been continuing in the same station for more than '8 years' and there is no plea of malafides or anything to suggest that it is arbitrary or beyond the power and competence of the authority who has issued the order of transfer.

9. With regard to transfer of an employee, the law is very well settled that it is an incidence of service. Interference by this Court in exercise of the judiciary jurisdiction under Article 226 of the Constitution of India in such matters is very limited. Unless it is substantiated that the order passed is actuated with malafides or it is patently arbitrary or that the authority who has ordered the transfer is not having the power, jurisdiction or competence to order the transfer, it is not liable to be interdicted.
10. In the instant case, no such case of malafides or arbitrariness has been pleaded or substantiated and there is no challenge as to the competence of the authority who has passed the order. The factual position is that the Appellant is continuing in the place for more than '8 years' and further, the present place of posting is not a far off place prohibiting the Petitioner from commuting the distance and joining his spouse at the place of residence.
11. We do not find any merit in the appeal and none of the grounds raised in support of the same could be held as tenable. In the said circumstances, interference is declined and the appeal stands dismissed as devoid of any merit.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge