

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 5333 of 2020

1. Pandeshwar Sai S/o Shri Jadura Sai Aged About 60 Years Presently Working As Chief Engineer, Public Works Department Bastar Zone, Jagdalpur, District Bastar Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary Public Works Department Mahanadi Bhawan Nawa Raipur District Raipur Chhattisgarh.
2. The Under Secretary Public Works Department Mahanadi Bhawan, Nawa Raipur, District Raipur Chhattisgarh.
3. G.R. Ravate Working as Superintending Engineer, Public Works Department, Kanker Circle, District Kanker Chhattisgarh.

---Respondents

For Petitioner	:	Shri B.D. Guru, Advocate.
For State	:	Shri Sudeep Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.12.2020

1. Challenge in the present writ petition is to the order Annexure P/1 dated 28.11.2020 whereby the services of the petitioner has been transferred from Bastar, Jagdalpur to the office of Engineer in Chief, PWD, Raipur.
2. The challenge in the writ petition is on the ground that the said order has been passed to circumvent the order passed by this court in WPS No.3801 of 2020 dated 24.09.2020 where on an earlier occasion the respondents had transferred the petitioner from the present place of posting to the Chhattisgarh Road Development Corporation. This court entertained the writ petition and had granted an interim protection in the said case. Now vide the impugned order the respondents have modified the earlier order dated 15.09.2020 to the extent of transferring the petitioner within the department from Bastar to Raipur.
3. The second contention of the petitioner is that the petitioner has been recently sent to Bastar where he had joined his services on 29.05.2020

and there was no administrative exigency as such for transferring the petitioner in the short span of time. Third ground of the petitioner is that the entire action on the part of the respondents is being done so as to accommodate the respondent No.3 who otherwise is not competent to hold the post of Chief Engineer and he has also been denied promotion on the said post in the past, but he has been sent in place of petitioner making him incharge Chief Engineer.

4. The another ground that the petitioner has raised is that the petitioner has got short tenure of service left for retirement inasmuch as he is to retire from service w.e.f. 31.05.2022.
5. Having heard the contentions put forth by the counsel for the petitioner and on perusal of records what is to be appreciated is the fact that the post which the petitioner is holding is quite a senior level post of State. Administrative exigency on the said post keeps on changing in accordance with situation. The post which is petitioner is holding cannot be declared to be a tenure post where minimum period of tenure is prescribed or laid down. Moreover, the first order of transfer dated 15.09.2020 was though challenged on various grounds, but primarily the writ petition was entertained on the ground that the order of transfer amounts to sending the petitioner on deputation and where his consent was not obtained. Realizing their mistake, the respondents have now reconsidered the decision and by the impugned order modified the same by transferring him to a different location within the department itself on the administrative exigency. It appears that the petitioner just does not want to move out of the present place of posting on some pretext or the other.
6. As regards the allegation of the order of transfer being passed to accommodate the respondent No.3 is concerned, what needs to be

considered is that the petitioner's service condition is not being adversely affected in any manner. The petitioner would not be forced to work under the respondent No.3. The petitioner has been sent to a different location in the same capacity on which he is performing at the present place of posting. Moreover, the respondent No.3 is working as a Superintending Engineer which is the feeder post for being promoted to the post of Chief Engineer and therefore it cannot be said that the respondent No.3 is much junior officer in the department who could not have been assigned the said responsibility.

7. It has been categorically held by the Supreme Court that transfer is an incident to service and that the policy of the State Government does not have any mandatory force but are only guidelines to be borne in mind as far as possible by the respondent authorities in the course of issuance an order of transfer.
8. In case of **State of U.P. Vs. Siyaram (2004) 7 SCC 405**, wherein the Supreme Court has held as under:-

“The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions

prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in **National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan**".

9. A Similar view has also been taken by the Supreme Court in case of **Union of India and others V. Janardhan Debanath and others (2004) 4 SCC 245.**

10. Again, in the case of **State of U.P. and others V. Govardhan Lal**, wherein the Supreme Court referring to the transfer policy of the State Govt. have categorically held that such policies do not have force of law nor is it mandatorily to be followed. Those are only guidelines which the authorities have to bear in mind while making the transfer. The Supreme Court in Paragraph 7 & 8 in the said judgment has held as under:-

"7 It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for

redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights. Unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer”.

11. So far as contention of the petitioner that the impugned transfer order is contrary to the policy of the State Government is concerned, the policies are mere guidelines and not controlled by any statutory provisions. The effect thereof is an advisory in character and thereby no legal right is conferred upon the employee. **Chief Commercial Manager, Sought Central Railway, Secundarabad & others V. G. Ratnam & others 2007 (8) SCC 212.**

- 12.** The Supreme Court, in **Airports Authority of India V. Rajeev Ratan Pandey & others, 2009 (8) SCC 337** held that “In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the Courts do not substitute their own decision in the matter of transfer”.
- 13.** Even otherwise, there is no challenge to the impugned order on any permissible legal grounds as aforesaid, warranting interference.
- 14.** This Court has limited jurisdiction to interfere with the transfer matter except in the cases of proved mala fide, non-competence of authority passing the transfer order and not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place forever. Under the provisions of service rules, employer has all the powers to post an employee at a particular place in view of public interest and administrative exigency. **(See High Court of Judicature of Madras Vs. R. Perachi (2011) 12 SCC 137.**
- 15.** Considering the aforesaid legal position as it stands, this court is of the opinion that no strong case is made out by the petitioner calling for interference with the impugned order at this juncture.
- 16.** Reluctance of this court in entertaining the writ petition would not preclude the petitioner from moving appropriate representation with the authorities for ventilating his grievances on the administrative side.
- 17.** The writ petition accordingly stands disposed of.

Sd/-
(P. Sam Koshy)
Judge