

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 28/01/2020****Judgment Delivered on : 14/02/2020****Writ Appeal No. 618 of 2019***{Arising out of order dated 12.12.2019 passed in Writ Petition (S) No. 7052 of 2019 by the learned Single Judge }*

Daloo Ram Darro S/o Raghunath Darro, aged about 58 years, R/o Quarter No. F/1, Irrigation Colony, Barpali, Korba, District Korba, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, through Secretary, Water Resources Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh.
2. Engineer-in-Chief, Water Resources Department, Shivnath Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
3. Chief Engineer, Ganga Kachhar, Water Resources Department, Ambikapur, District Ambikapur, Chhattisgarh.
4. Shri Vijay Jamnik, Assistant Engineer O/o Executive Engineer, Water Resources Division, Balrampur, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Praveen Das, Advocate.
For Respondents/State	: Shri Chandresh Shrivastava, Deputy Advocate General.
For Respondent No. 4	: Dr. N.K.Shukla, Senior Advocate with Shri Animesh Verma, Advocate.

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

C.A.V. Judgment**Per P.R. Ramachandra Menon, Chief Justice**

1. Dismissal of the writ petition filed by the Appellant, repelling the challenge against Annexure A/2 and Annexure A/5 orders transferring the Appellant, who is working as 'Executive Engineer', to accommodate the 4th

Respondent, who is only an 'Assistant Engineer', giving charge of the Executive Engineer, in total disregard to the clear mandate of clause 2.14 of the transfer norms, is subjected to challenge in this appeal.

2. The case has got a long history, though concluded in a short span of time. The Appellant/Petitioner was appointed to the post of Assistant Engineer, Canal Division No. 1, District Korba in the Water Resources Department in the year 1987 and later was promoted as Executive Engineer and posted at Hasdeo Project Circle in the District Raigarh in the year 2003. Thereafter, he was transferred to various places/projects at Korba, Bijapur, Raipur, Dantewada, again to Raipur and then to Ambikapur in the year 2004, 2007, 2008, 2010, 2011, 2012 (two transfers in the same year), respectively. Lastly, the Appellant was transferred from Hasdeo Ganga Basin, Water Resources Division, Ambikapur to Water Resources Division, Jashpur in the year 2016 and was continuing in the said post.

3. While so, as per Annexure A/2 order dated 09.08.2019, the Appellant was transferred from Water Resources Division, Jashpur to Water Resources Division, Balrampur, which according to the Petitioner/Appellant was absolutely without any administrative exigency and hence, it was sought to be challenged by filing Writ Petition (S) No. 6593 of 2019. As per the very same order dated 09.08.2019, the slot made vacant after shifting the Appellant/Petitioner was filled up by accommodating the 4th Respondent who was only an 'Assistant Engineer', however, giving him the charge of the Executive Engineer. This was cited as a sheer instance of malafides, more so, being contrary to the mandate of clause 2.14 of the transfer norms; which

clearly stipulated that no transfer shall be effected to the post of a senior by accommodating a junior. It was accordingly that the pleadings and prayers were raised with reference to absence of any administrative exigency and also pointing out the *malafide* exercise of power, to extend unlawful gains to the 4th Respondent and also the blatant violation of the transfer norms *i.e.* clause 2.14.

4. When the matter was pending consideration, the competent authority issued Annexure A/3 order dated 23.08.2019, whereby the transfer of the Appellant and the 4th Respondent ordered as per Annexure A/2 dated 09.08.2019 was cancelled. Yet another order was passed by the very same authority, on the very same date *i.e.* on 23.08.2019; whereby Annexure A/3 order was withdrawn and Annexure A/5 order was issued, restoring the position as it contained in Annexure A/2 order dated 09.08.2019. The Appellant/Petitioner was never told as to the happenings in this regard; nor was it brought to the notice of the Court when the writ petition was finalised as per Annexure A/4 verdict dated 28.08.2019, relegating the Appellant/Petitioner to file a representation, upon which the Respondents were held as free to consider the same on merits in accordance with law.

5. Immediately on coming to know about the course and events, particularly passing of Annexure A/3 and Annexure A/5 on 23.08.2019 and involvement of a new cause of action, the Appellant/Petitioner sought to challenge the same by filing Writ Petition (S) No. 7052 of 2019 demonstrating the *malafide* exercise of power by the Respondents concerned. When the matter came up for consideration before the learned Single Judge, the turn of

events was taken note of and an interim order of stay was granted on 04.09.2019 as borne by Annexure A/7. After completion of the pleadings, the matter came up for consideration before another Bench and the matter was heard finally on 12.12.2019, whereby the writ petition was dismissed as per Annexure A/1 verdict, which is subjected to challenge in this appeal.

6. While considering the merit of the appeal on 20.12.2019, it was submitted that the Appellant was still working as 'Executive Engineer' at Jashpur. However, it was pointed out from the part of the 4th Respondent that he had already joined at Jashpur on 14.08.2019. Considering the interim order granted by the learned Single Judge earlier on 04.09.2019 in favour of the Appellant, it was directed to maintain '*status quo*' as on date in respect of the posting to the office of the 'Executive Engineer', Water Resources Division, Jashpur, till the next date. The said interim order came to be extended and is continuing in operation. On 13.01.2020, this Court took note of the disturbing sequence of events with reference to Annexure A/3 and Annexure A/5 passed on the 'same date', without showing any reasons leading to the said orders and even without referring to Annexure A/3 in Annexure A/5, passed subsequently, though passed on the same date i.e. 23.08.2019. It was also observed that, nothing was mentioned in the return filed from the part of the Government and that it was not discernible as to why the passing of Annexure A/3 and Annexure A/5 on 23.08.2019 was not brought to the notice of the learned Single Judge, when the judgment was passed on 28.08.2019 and the writ petition {WP(S) No. 6593 of 2019} was disposed of.

7. Pursuant to this, a return/affidavit dated 21.01.2020 has been filed from the part of the State contending that the transfer was ordered in view of the administrative exigency; that several officers were transferred to different offices throughout the State as per the order dated 09.08.2019; that the Appellant/Petitioner had already crossed the tenure of three years at Jashpur; that the 4th Respondent had already been relieved from the previous post and had joined at the transferred place as "in-charge Executive Engineer" on 14.08.2019, that the earlier transfer order dated 09.08.2019 in respect of the Appellant and the 4th Respondent was cancelled as per the order dated 23.08.2019 and later, on finding that the 4th Respondent had already been relieved and had joined the post at Jashpur, the order passed on the said date (Annexure A/3) was cancelled as per the subsequent order passed on the same date *i.e.* 23.08.2019 (Annexure A/5) restoring the position as prevailing on 09.08.2019.

8. The reason for passing Annexure A/3 order dated 23.08.2019 is that, on 22.08.2019, a decision had been taken by the competent authority to cancel the transfer of 7 persons including that of the Appellant/Petitioner and the 4th Respondent; but copy of the said decision is not produced and no reason has been mentioned; by virtue of which it has to be reasonably presumed that the transfer of the Petitioner and the 4th Respondent ordered on 09.08.2019 was a mistake, particularly in view of the violation of 'clause 2.14' of the transfer norms, as pointed out by the Appellant/Petitioner. No reference is made to the said order (Annexure A/3), when it was cancelled as per Annexure P/5 order passed on the same day *i.e.* on 23.08.2019 and

admittedly, these proceedings were never brought to the notice of the learned Single Judge when the writ petition was finalised on 28.08.2019. No explanation is offered from the part of the Respondents/State for playing 'hide and seek game', which cannot but be deprecated.

9. The Appellant/Petitioner has filed a rejoinder reiterating the contentions including as to the *malafide* exercise of power and violation of the mandate of clause 2.14 of the transfer norms. The learned counsel for the Appellant/Petitioner asserted the facts and figures with reference to the sequence of events as borne out from the pleadings and materials on record.

10. Dr. Shukla, the learned Senior Counsel appearing for the 4th Respondent submits that there is absolutely no fault on the part of the said Respondent and that the 4th Respondent had already been relieved pursuant to the order of transfer and had joined his duty by 'assuming the charge' on 14.08.2019, since the Appellant/Petitioner was not present in the office at Jashpur.

11. Shri Chandresh Shrivastava, the learned Deputy Advocate General appearing for the State submitted that the Appellant/Petitioner had no vested right to continue at Jashpur, more so when he had completed the tenure of three years and further that transfer can be intercepted only on the ground of incompetency of the officer who issued the order or if it is in violation of the statutory rules or is based on *malafides*, which instances are not available in the case in hand. It was also pointed out that the 4th Respondent has been posted only by giving 'charge' of Executive Engineer and there are several such postings made by the Respondent throughout the State.

12. We are aware of the limited scope for interference in transfer matters. More so, since transfer is an incidence of service and nobody can aspire to be retained at a particular place or can have a claim to a particular post. However, transfer cannot be ordered in an arbitrary fashion and it is in this regard that transfer norms/rules have been framed as a guiding factor. Though the said rules/norms can be taken only as a guideline and not a statute, it cannot be contended by the State that the framers of the guidelines/norms being the State, they can have it violated, subject to their whims and fancies to accommodate any person of their choice at any time, at any place. The so-called 'administrative exigency' and unlawful gains stated as being extended to the 4th Respondent have to be tested in the said background.

13. Admittedly, the Petitioner is holding the office of the 'Executive Engineer', whereas the 4th Respondent is working only as an 'Assistant Engineer', much lower in the hierarchy of the posts. Clause 2.14 of the Transfer guidelines reads as follows:

“2.14 सामान्यतः स्थानांतरण द्वारा रिक्त होने वाले पद की पूर्ति उसी पद के समकक्ष अधिकारी की पदस्थापना से की जाए । वरिष्ठ अधिकारी का स्थानांतरण कर उस पद का प्रभार कनिष्ठ अधिकारी को न दिया जाए ।”

Though, transfer is an incidence of service, the service jurisprudence does not contemplate transfer and filling up the posts between two different cadres, unless the exigency is so imminent to place an officer of a lower level against a post at higher level, giving the charge. As mentioned already, the Appellant has been suffering transfer almost every or alternate year from 2004, shifting him from one place to another. In the year 2012,

there were two instances of such transfer and later, he was transferred to Jashpur in the year 2016 where he is continuing. This by itself shows that the Appellant/Petitioner was serving the Department; discharging duty at the transferred place, without resistance, to meet the organisational requirement. It may be true that the Appellant has completed the tenure of three years at Jashpur and can be transferred out, if the 'administrative exigency' so demands. At the same time, it has to be noted that, every person who has completed the tenure of three years requires to be transferred, unless there is any 'administrative exigency' or somebody having a better claim has sought for posting to such place.

14. There is no case for the Respondents that any 'Executive Engineer', having a sustainable claim and working at some other place, has sought for a posting at Jashpur where the Appellant is working. Then, the remaining question is with regard to the 'administrative exigency'. There is no case for the Respondents that they have received any complaint with regard to the performance of the Appellant/Petitioner while working as Executive Engineer at Jashpur, nor is there any case that his work/output is not satisfactory or up to the requisite extent, or that some particular task has to be completed by deploying the service of a 'better skilled' person. The 4th Respondent is only an 'Assistant Engineer', who occupies a much lower pedestal, when compared to the post of Executive Engineer held by the Appellant/Petitioner. Assistant Engineer can be transferred to the post of Assistant Engineer, and not against the post of Executive Engineer, though an Assistant Engineer can be given the charge of the Executive Engineer, if

the slot of the Executive Engineer is vacant. To put it more clear, it is not within the service jurisprudence that an Executive Engineer already serving in a place or post has to be transferred to accommodate an Assistant Engineer in his place, by giving charge of the Executive Engineer, which cannot stand the test of administrative exigency. Even by the farthest stretch of imagination, the knowledge, skill and experience gathered by the 4th Respondent/Assistant Engineer to function as 'Executive Engineer-in-Charge' can only be lesser than the said traits gathered by the Appellant/Petitioner who is already holding the post of Executive Engineer for more than 1½ decades i.e. from 2004, more so when there is no complaint against the service of the Appellant/Petitioner.

15. That apart, 'clause 2.14' of the transfer rules has been violated, while extending favours to the 4th Respondent, which has not been explained and no attempt has been made in this regard, in the pleadings and proceedings brought forth from the part of the Respondents. As noted already, the Respondent/State has mentioned in paragraph 6 of the statement dated 21.01.2020, supported by an affidavit, that a decision was taken by the competent authority on 22.08.2019 to cancel the transfer of 7 persons including that of the Appellant and the 4th Respondent, leading to Annexure A/3 order dated 23.08.2019 cancelling the transfer order as per Annexure A/2 dated 09.08.2019. The said decision was a 'conscious exercise' as to the mistake committed earlier on 09.08.2019 while effecting the transfer contrary to 'clause 2.14' of the transfer norms, as to be reasonably presumed. After having taken such a conscious decision, why it

simply came to be varied on the very same day, (after passing Annexure P/3 on 23.08.2019) by issuing Annexure P/5, restoring the position as contained in Annexure P/2 dated 09.08.2019, merely with reference to joining of the 4th Respondent at Jashpur, is left unanswered. It does not explain the position with regard to the decision taken on 22.08.2019, to have the earlier order dated 09.08.2019 (Annexure A/2) cancelled. These proceedings which were not within the knowledge of the Appellant/Petitioner when the Writ Petition (S) No. 6593 of 2019 was finalised on 28.08.2019. Why it was not brought to the notice of the learned Judge, from the part of the Government, is not known. There is absolutely no mention of Annexure A/3 or Annexure A/5 (both dated 23.08.2019), though the judgment was passed only on 28.08.2019. It cannot but be presumed that, after taking a conscious decision on 22.08.2019 to cancel the transfer of the Appellant and the 4th Respondent as ordered on 09.08.2019, some gravitational push or pull was there, compelling the very same authority to have changed his stand on passing Annexure A/3, by causing to issue Annexure A/5. Posting an Assistant Engineer with much lesser experience, giving charge in the post of Executive Engineer, after shifting the Executive Engineer having an experience of 15 years in the said post from 2004, cannot be certified as an instance of administrative exigency. It can only be held as an instance of extending undue favours to the 4th Respondent, who cannot claim a posting as 'Executive Engineer-in-Charge' as a matter of right.

16. In the above circumstances, we find that the issue projected before the learned Single Judge has not been properly considered and it requires

interference. The Appellant has succeeded in establishing his case and the Respondents have miserably failed in demonstrating a fair deal/exercise with regard to the transfer ordered. In the above circumstance, Annexure A/2 order dated 09.08.2019 insofar as the Appellant and the 4th Respondents are concerned and the Annexure A/5 order dated 23.08.2019 whereby the Annexure A/3 order of the same date i.e. 23.08.2019, was recalled, stand set aside. The Appellant, who is continuing as Executive Engineer at Jashpur, by virtue of the interim order of '*status quo*' passed by this Court on 20.12.2019 and being extended thereafter, is permitted to continue in the post of Executive Engineer at Water Resources Division, Jashpur till the next general transfer. It shall be the look out of the Respondents 1 to 3 to give appropriate posting to the 4th Respondent.

17. The appeal as well as the writ petition stand allowed.

Sd/-

(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE