

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 24.02.2020****Judgment delivered on 20.03.2020****Writ Appeal No.5 of 2020**

(Arising out of order dated 02.12.2019 passed in Writ Petition (S) No.9948 of 2019 by the learned Single Judge)

Radhelal Jaiswal S/o Late Shri Mahajan Jaiswal, Aged About 54 Years, Working As Lecturer, And Posted At Block Education Officer Nawagarh, District - Janjgir - Champa Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through Secretary, Department of School Education Development, Mahanadi Bhawan, Mantralaya New Raipur, District - Raipur Chhattisgarh.
2. Collector, Janjgir - Champa District - Janjgir - Champa Chhattisgarh.
3. District Education Officer, Janjgir - Champa, District - Janjgir - Champa Chhattisgarh.
4. Vijay Kumar Lahre, Working As Lecturer at Block Education Officer - Mainpur, District - Gariyaband Chhattisgarh.

---- Respondents

For Appellant : Shri Anish Tiwari, Advocate

For Respondent/State : Shri Chandresh Shrivastava, Dy. Advocate General

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

C A V Judgment**Per Parth Prateem Sahu, Judge**

1. Subject matter of this writ appeal is as to the order dated 02.12.2019 passed in Writ Petition (S) No.9948 of 2019 whereby the learned Single Judge has declined to interdict with

the order of transfer dated 22.08.2019.

2. Facts of the case in nutshell, are that, the Appellant whose substantial post is Lecturer (English) was posted as Block Education Officer at Nawagarh, District Janjgir-Champa, Chhattisgarh. He was transferred to Government Girls Higher Secondary School, Jaijaipur, Block Jaijaipur on administrative ground along with other Principals, Lecturers and Teachers vide order dated 22.08.2019 (Annexure P/2), which was challenged by the Appellant by filing Writ Petition (S) No.7040 of 2019. The learned Judge while hearing the writ petition, taken note of the submission made by learned counsel therein that the Petitioner was posted at the present place of posting on 14.12.2018 at Nawagarh, District Janjgir-Champa and within a short span of time, he was again transferred, directed the Appellant to file a representation within a period of 10 days before the Respondents and the Respondents were directed to consider the representation within a further period of 45 days from the date of receipt of the representation and till then, interim order of stay was ordered in favour of the Appellant.

3. The representation submitted by the Appellant in pursuance to the order dated 04.09.2019 passed in Writ Petition (S) No.7040 of 2019 was dismissed vide order dated 20.11.2019 (Annexure P/1), which made the Appellant to file another writ petition bearing Writ Petition (S) No.9948 of 2019, which came to be dismissed by the learned Single Judge vide

order dated 02.12.2019.

4. Shri Anish Tiwari, learned counsel for the Appellant submits that the Appellant was posted in the office of Block Education Officer, Nawagarh, District Janjgir-Champa as incharge Block Education Officer only on 14.12.2018 and within a period of eight months, the Appellant has again been transferred to Government Girls Higher Secondary School, Jaijaipur, Block Jaijaipur. It is contended on behalf of the Appellant that he has been subjected to frequent transfer and reliever is of a T-Cadre (Tribal) employee whereas the Block Education Office of Nawagarh is not a T-Cadre. It is also pointed that rejection of the representation vide order dated 20.11.2019 (Annexure P/1) is a non-speaking order and no reasons have been assigned by the authorities while rejecting the representation. It is further contended that transferred place of posting i.e. Jaijaipur is about 50-60 kms away from Nawagarh, the Appellant and his family members will be adversely affected.

5. Learned counsel for the Appellant placed reliance in the judgments passed by Hon'ble Supreme Court in **B. Varadha Rao v. State of Karnataka and Others**, reported in **(1986) 4 SCC 131**, **T.S.R. Subramanian and Others v. Union of India and Others**, reported in **(2013) 15 SCC 732** and the judgment passed by High Court of Madhya Pradesh in **Sanjay Upadhyay v. State of M.P. and Ors.** in **Writ Petition No.21175 of 2019**

vide order dated **03.12.2019** to support his contention.

6. Per contra, Shri Chandresh Shrivastava, learned Deputy Advocate General representing the State submits that the order dated 19.06.2017 (Annexure P/4), which is being projected by the Appellant is his transfer order from Government Middle School, Nardha, Baloda Bazar to Minimata Girls Higher Secondary School, Kasdol (Nagar Panchayat), Block Kasdol, District Baloda Bazar-Bhatapara, in fact, is not a transfer order, but it is an order of promotion of Appellant along with others. It is contended by the learned counsel for the State that as per the order of promotion dated 19.06.2017 (Annexure P/4), it is apparent that posting after promotion on the Schools mentioned in the order of promotion is temporary. It is further contended that substantial post of Appellant is Lecturer, whereas the Block Education Officer is a higher post and post of Principal is a feeder post of Block Education Office. The Appellant cannot claim as a matter of right to hold the post of Block Education Officer. The Appellant has been transferred to the post, which he is actually holding. He placed on record the document with regard to the distance of School from the earlier place of posting i.e. Nawagarh to the present place of posting i.e. Jaijaipur, which is only about 25 Kms away.

7. We have heard learned counsel appearing for the respective parties and perused the documents placed on record by them.

8. Annexure P/4, which is filed along with writ petition, in which, the Appellant himself showing it to be one of the transfer order dated 19.06.2017 and submitting that he has been transferred from Government Middle School, Nardha, Baloda Bazar to Minimata Girls Higher Secondary School, Kasdol (Nagar Panchayat), Block Kasdol, District Baloda Bazar-Bhatapara would show that it is not a transfer order, but is a promotion order wherein the Appellant has been promoted as Lecturer (English) and prior to the date of promotion, the Appellant was posted at Government Middle School, Nardha, Baloda Bazar where Teachers are required to teach the students up to the Middle School level. The Lecturers are being posted to High School or Higher Secondary School and being promotion of the Appellant as Lecturer (English), he has been posted to Minimata Girls Higher Secondary School, Kasdol (Nagar Panchayat), Block Kasdol, District Baloda Bazar-Bhatapara, which cannot be treated as an order of transfer.

9. In pursuance to the order dated 04.09.2019, the Appellant has submitted his representation and on perusal of it shows that the Appellant has raised only ground that he has been posted on the post of Block Education Officer only eight months ago, therefore, he should be allowed to work on the post of Block Education Officer.

10. The other submission made by learned counsel for the Appellant is that he has joined on 14.12.2018 as Block

Education Officer in the office of Block Education Office, Nawagarh and he has been transferred within a period of eight months is concerned, admittedly, the Appellant is holding a post of Lecturer (English) and not of Principal or directly appointed as Block Education Officer. The post of Block Education Officer is a promotional post for Principals. The Appellant who is holding the substantial post of Lecturer will not be eligible to hold the post of Block Education Officer unless and until, there is any administrative exigency. If for any administrative reason, the Appellant has been posted as incharge Block Education Officer, then that will not grant him any right to hold the post of Block Education Officer permanently and the respondent authorities can very well at any point of time, pass an order of posting of Appellant on the post which he is substantially holding. Transfer of Appellant from incharge post to substantial post by the Respondent cannot be treated as a arbitrary exercise.

11. The other submission made by learned counsel for the Appellant that present place of posting i.e. Government Girls Higher Secondary School, Jaijaipur, Block Jaijaipur is about 50 Kms away from Nawagarh and the Appellant's family will be adversely affected is not sustainable in view of the document placed before this Court by the learned counsel for the State wherein the distance of Jaijaipur is only 25 Kms from Nawagarh. Looking to the distance, Appellant can very well take

care of his family even if residing at Nawagarh from where he has been transferred and can easily commute.

12. It is settled law that transfer is an incidence of service and a person holding the transferable post, has to comply with the directions/orders issued by the competent authority. It is for the competent authority to post an employee at a particular place looking to the post, which he/she is holding, better utilization of his/her service looking to his/her need and requirement.

13. The case law relied upon by the learned counsel for the Appellant is on different facts. In the matter of **Sanjay Upadhyay** (supra), the issue was that the Petitioner therein suffered about eight transfer orders in three years.

14. The Hon'ble Supreme Court in the matter of **B. Varadha Rao** (supra) has held that frequent, unscheduled and unreasonable transfers are bad because it can uproot the family, cause irreparable harm to a Government servant and drive him to desperation and also cause complications and it disrupts the education of his children. In the case at hand, looking to the distance which is only 25 Kms away from earlier place of posting at Nawagarh, in our considered opinion, the Appellant can manage to serve at the place of posting even after having family to be settled at Nawagarh itself.

15. The Appellant has not raised any ground of malafide, which could be one of the grounds for interfering with the order

of transfer of a Government employee.

16. For the foregoing reasons, we do not find any tenable ground in the writ appeal calling interference with the impugned order. The writ appeal devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh