

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 10848 of 2019

Narayan Halder S/o Shri Makhan Halder Aged About 34 Years
Working As Rural Agriculture Extension Officer At Office Of Senior
Agriculture Development Officer, Pakhanjoor, District Kanker

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Agriculture Development And Former Welfare And Bio Technology Department, Mahanadi Bhawan, Mantralaya, Atal Nagar Nawa Raipur Chhattisgarh
2. Dy. Director Agriculture Kanker District Kanker Chhattisgarh
3. Sub Divisonal Officer Bhanupratappur, Kanker, District Kanker Chhattisgarh

----Respondents

For petitioner – Shri Somkant Verma, Advocate.
For State-Shri Avinash Singh, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

06/01/2020

1. This is the second round of litigation. The petitioner was transferred from Kanker to Bijapur which was subject of challenge in WPS No.7396 of 2019 wherein this court on 19/09/2019 has passed the following order:-

“1. The challenge in the present writ petition is to the impugned order Annexure P-1 dated 22.08.2019 whereby the petitioner has been transferred from Kanker to Bijapur.

2. Contention of the petitioner is that the petitioner has been transferred from a Scheduled area to a core scheduled area. The petitioner makes statement that petitioner is willing to go to a non scheduled area anywhere in the State of Chhattisgarh. He should not be transferred to a scheduled area as per the scheduled area policy of the State Government itself.

3. Given the said facts, let petitioner make an appropriate application in that regard giving undertaking that he is ready to move on transfer to a non scheduled area. Of such representation being made, respondents shall consider the same in accordance with the policy at the earliest preferably within a period of 90 days.

4. With the aforesaid observations, the writ petition stands disposed

of.”

2. Subsequent to it the petitioner filed a representation on the ground that the petitioner had earlier served seven years in the core scheduled area i.e. at Pakhanjoor, District Kanker and he has again been transferred to core scheduled area. It is stated that according to the policy of the State unless and until some reliever comes, the petitioner cannot be forced to leave and join at the place of transfer. It is further contended that the petitioner prayed that since he has already spent more than seven years in the core scheduled area his transfer may either be cancelled or he may be posted at a non-scheduled area. It is further contended that said representation was decided by Annexure P-1 and no whisper has been made as to how it satisfy the transfer policy and instead in the mechanical manner the transfer order has been cancelled.

3. Learned State counsel opposes the argument and further submit that transfer being incident of service the State is within its right to cancel the representation.

4. Perused the earlier order of the High Court. The transfer policy is also on record. Transfer policy 2.1 pertains to discharge of the job and transfer in a scheduled and core scheduled area and thereafter to non-schedule area. Following the transfer policy the State has given the guidelines which finds at clause 3.7.

5. Perused the earlier order passed by this Court wherein this court has given the liberty to file a representation and reading of the representation would show that specific averments have been made that the petitioner has already spent more than seven years in the core scheduled area and as per clause 2.2 of transfer policy as contended since no complaint have been made against him he may not be transferred from Pakhanjoor which was the present place of posting and further pleaded that in case he is transferred he may be transferred to

place other than the core scheduled area and the scheduled area.

6. As against those averments when the decision of the representation Annexure P-1 when is read in between lines it does not whisper any answer to the ground raised by the petitioner instead as an omnibus observation is made that the transfer do not flout any conditions of transfer policy. The earlier order passed by this court would also be relevant. When there is specific direction have been passed by this court and the transfer policy clause 2.2 purports that the person who is placed in the scheduled area he should not be removed till a complaint is received against him and in case complaint is received in pursuant thereto government may decide to place him in other place of posting would be applicable in absence of any complaint. Clause 2.1 of the transfer policy also purports that normally a person who has rendered service in the scheduled area should be normally be placed out of the scheduled area or core scheduled area. The order rejecting representation do not take into any sweep the grounds raised in the representation.

7. The Supreme Court in the case of ***Secretary and Curator, Victoria Memorial Hall Versus Howrah Ganatantrik Nagrik Samity and others*** {(2010) 3 SCC 732} has held thus in para 40, 41 & 42 which are reproduced herein below:-

“40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and

judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [Vide State of Orissa Vs. Dhaniram Luhar AIR 2004 SC 1794; and State of Rajasthan Vs. Sohan Lal & Ors. (2004) 5 SCC 573].

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of U P (2008) 3 SCC 172; SAIL Vs. STO (2008) 9 SCC 407; State of Uttaranchal Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana (2009) 3 SCC 258; Mohd Yusuf Vs. Faij Mohammad (2009) 3 SCC 513; and State of H P Vs. Sada Ram (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected."

8. Clause 2.1 and 2.2 are reproduced hereunder:-

"2.1 दुर्गम अनुसूचित क्षेत्र में कम से कम दो वर्ष अथवा सामान्य अनुसूचित क्षेत्र में तीन वर्ष तक पदस्थापना की जाए। अनुसूचित क्षेत्र में रिक्त पदों की उपलब्धता एवं शासकीय सेवक द्वारा अनुसूचित क्षेत्र में की गई सेवा अवधि के अनुसार उसकी पदस्थापना गैर अनुसूचित क्षेत्र में करने पर विचार किया जाए।

2.2 जो शासकीय सेवक स्वेच्छा से अनुसूचित क्षेत्र में रहना चाहता हो, उसे वहां से तब तक न हटाया जाए, जब तक कि उसके विरुद्ध प्राप्त किसी शिकायत पर विभाग ने उसे प्रशासनिक आधार पर हटाने का निर्णय न लिया गया हो।"

9. Taking into such fact when the transfer policy is translated into the order of representation it does not satisfy the answer to the policy. In view of this when certain transfer policy exist and the specific grounds have been raised that the petitioner has served more than 7 years in the core

scheduled area then in such case this has to be given a weightage as otherwise the persons who are posted in the non-scheduled area shall never be put in exchange and a particular employee may spent the entire service carrier in scheduled and core scheduled area which obviously is not the spirit of the transfer policy.

10. In a result, Annexure P-1 prima facie do not satisfy to the fact that the transfer has been affected according to the policy is set aside. It is being remitted back to the Secretary who has decided the representation to reconsider the transfer of the petitioner and decide the case of the petitioner within an outer limit of six months. Till then the petitioner's transfer shall not be given effect to.

11. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE