

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.5220 of 2016Order reserved on: 8-7-2021Order delivered on: 13-7-2021

Harbhajan Singh, S/o Late Inder Singh Chawla, aged about 53 years, Occupation Service, Presently posted as Assistant Grade-III at Chhattisgarh State Urdu Academy, Raipur, R/o Ganj Para, Station Road, Raipur (C.G.) Civil & Revenue District Raipur.

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Adim Jati tatha Anusuchit Jati Vikas Vibhag / General Administration Department, Capital Complex, Mahanadi Bhawan, Naya Raipur, Tahsil & District Raipur.
2. The Commissioner, Adim Jati tatha Anusuchit Jati Vikas Vibhag, Block-4D, Ground Floor, Indrawati Bhawan, Naya Raipur, Tahsil & District Raipur
3. Chhattisgarh Urdu Academy, Raipur, through its Secretary, Old RDA Building, 1st Floor, Raipur, Tahsil and District Raipur.
4. Shri M.R. Khan, Secretary, Chhattisgarh Urdu Academy, Raipur.

---- Respondents

Writ Petition (S) No.5227 of 2016

Mohammed Shabir Khan, S/o Shri Anees Ahmed, aged about 56 years, Occupation Service, Presently posted as Assistant Grade-III at Chhattisgarh State Urdu Academy, Raipur, R/o Nizami Chowk, Sanjay Nagar, Raipur (C.G.) Civil & Revenue District Raipur.

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Adim Jati tatha Anusuchit Jati Vikas Vibhag / General Administration Department, Capital Complex, Mahanadi Bhawan, Naya Raipur, Tahsil & District Raipur.
2. The Commissioner, Adim Jati tatha Anusuchit Jati Vikas Vibhag, Block-4D, Ground Floor, Indrawati Bhawan, Naya Raipur, Tahsil & District Raipur
3. Chhattisgarh Urdu Academy, Raipur, through its Secretary, Old RDA Building, 1st Floor, Raipur, Tahsil and District Raipur.
4. Shri M.R. Khan, Secretary, Chhattisgarh Urdu Academy, Raipur.

---- Respondents

ANDWrit Petition (S) No.5232 of 2016

Tulsi Ram Sahu, S/o Late Girdharilal Sahu, aged about 51 years, Occupation Service, Presently posted as Assistant Grade-III at Chhattisgarh State Urdu Academy, Raipur, R/o RDA Colony, Boriyakhurd, Raipur (C.G.) Civil & Revenue District Raipur.

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Ministry of Adim Jati तथा Anusuchit Jati Vikas Vibhag / General Administration Department, Capital Complex, Mahanadi Bhawan, Naya Raipur, Tahsil & District Raipur.
2. The Commissioner, Adim Jati तथा Anusuchit Jati Vikas Vibhag, Block-4D, Ground Floor, Indrawati Bhawan, Naya Raipur, Tahsil & District Raipur
3. Chhattisgarh Urdu Academy, Raipur, through its Secretary, Old RDA Building, 1st Floor, Raipur, Tahsil and District Raipur.
4. Shri M.R. Khan, Secretary, Chhattisgarh Urdu Academy, Raipur.

---- Respondents

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For Petitioners: Mr. B.P. Sharma, Advocate.

For Respondents No.1 and 2 / State:-

Mr. Sunil Otwani, Additional Advocate General.

For Respondent No.3: Mr. Prafull Bharat, Senior Advocate with Mr. Aakash Pandey, Advocate.

For Respondent No.4: Mr. S.K. Thomas, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of these matters have been taken-up through video conferencing.
2. Since all the three writ petitions arise out of the common order, they were clubbed and heard together and are being disposed of by this common order.
3. In all the three writ petitions, the petitioners calls in question the order dated 20-9-2016 (Annexure P-1) by which they have been directed to

work from the office of respondent No.3 to the office of respondent No.2. It is the case of the petitioners that they are working with respondent No.3 and discharging their duties diligently and by the impugned order Annexure P-1, they have been transferred abruptly without there being any proposal in this regard by the incompetent authority from the office of respondent No.3 to the office of respondent No.2 by an order passed by the incompetent authority and the transfer during the ban period being contrary to transfer policy and it is also mala fide exercise of power at the instance of respondent No.2, as such, the order of transfer (Annexure P-1) deserves to be set aside.

4. Return has been filed by the State / respondents No.1 & 2 opposing the writ petitions stating inter alia that the petitioners are originally employees of the M.P. State Road Transport Corporation (MPSRTC), but since the MPSRTC has been dissolved and it has not been constituted in the State of Chhattisgarh, their services were absorbed in the Chhattisgarh Infrastructure Development Corporation Limited (CIDC) and vide order dated 22-3-2016 (Annexure R-1), they have been sent on deputation to the Aadim Jati tatha Anusuchit Jati Vikas Vibhag of which Respondent No. 2 Commissioner is the head of the Department and they were posted in the office of respondent No.3 to do academic work, and by the impugned order, simply they have been directed to work from the office of respondent No.2, as such, it is not transfer within the meaning of Rule 17 (Chapter II) of the Fundamental Rules, therefore, the writ petitions deserve to be dismissed.
5. Respondents No.3 & 4 have also filed separate returns opposing the writ petitions in similar lines.
6. Mr. B.P. Sharma, learned counsel appearing for the petitioners in all the writ petitions, would submit that the order impugned has not been

passed by the competent authority, it has also been passed in violation of the transfer policy issued in this behalf for transfer of Government servant and it is mala fide exercise of power at the instance of respondent No. 4, as such, the writ petitions deserve to be allowed. He relied upon the decision of the Supreme Court in the matter of State Bank of India v. Anjan Sanyal and others¹ to buttress his submission.

7. Mr. Sunil Otwani, learned Additional Advocate General appearing for the State / respondents No.1 & 2, would submit that since the petitioners' services have been sent on deputation by the CIDC to the respondent No.1 Department, the petitioners have been posted in the office of respondent No.3 to do academic work, as respondent No.3 is a part of respondent No.1 Department and it is not transfer within the meaning of "transfer" defined in the definition clause of Rule 17 of Chapter II of the Fundamental Rules and therefore, the writ petitions deserve to be dismissed.
8. Mr. Prafull Bharat, learned Senior Counsel appearing for respondent No.3, would also submit that it is not transfer within the meaning of Rule 17 (Chapter II) of the Fundamental Rules and as such, the writ petitions deserve to be dismissed.
9. Mr. S.K. Thomas, learned counsel appearing for respondent No.4, would support the impugned order.
10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
11. The petitioners were earlier employees of the MPSRTC. Road Transport Corporation was not constituted in the State of Chhattisgarh

¹ (2001) 5 SCC 508

and therefore the services of the petitioners were absorbed in the Chhattisgarh Infrastructure Development Corporation Limited (CIDC) and by order dated 22-3-2016 (Annexure R-1), their services were sent on deputation to the Department of SC & ST Development. Thereafter, since respondent No.3 is a part of the Department of SC & ST Development under the control of respondent No.2, the petitioners were posted in the office of respondent No.3 (but this order is not placed on record). However, it is the case of respondents No.1 & 2 that since the petitioners were working with respondent No.3, by the impugned order dated 20-9-2016 (Annexure P-1), they have been again directed to be posted with respondent No.2, it is not a transfer order within the meaning of Rule 17 (Chapter II) of the Fundamental Rules. Suppl.Rule 17 (Chapter II) of the Fundamental Rules (Definitions) defines “transfer” as under: -

“(17) “Transfer” means the movement of a Government servant from one headquarter station in which he is employed to another such station either (a) to take up the duties of a new post, or (b) in consequence of a change of his headquarters.”

12. A careful perusal of the aforesaid meaning of “transfer” would show that transfer means the movement of a Government servant from one headquarter station in which he is employed to another such station either to take up the duties of a new post, or in consequence of a change of his headquarters.
13. In the instant case, the petitioners have only been directed that since they are working in Chhattisgarh Urdu Academy, Raipur, they have been directed to work in the office of respondent No.2 which is also located at Raipur. Order dated 20-9-2016 states as under: -

// आदेश //

माननीय मंत्री, आदिम जाति तथा अनुसूचित जाति विकास विभाग एवं पेट्रन छ.ग. उर्दू अकादमी, रायपुर के अर्धशासकीय पत्र क्रमांक/2124 दिनांक 19.09.2016 के तारतम्य में कार्यालय, छत्तीसगढ़ उर्दू अकादमी, रायपुर में कार्यरत् निम्नांकित कर्मचारियों को कार्यालय आयुक्त, आदिम जाति तथा अनुसूचित जाति विकास, इन्द्रावती भवन, नया-रायपुर में आगामी आदेश पर्यन्त कार्य करने हेतु आदेशित किया जाता है ।

क्र.	कर्मचारी का नाम	पदनाम
1	2	3
1.	श्री हरभजन सिंह	सहायक ग्रेड- 03
2.	श्री मोहम्मद शाबिर खान	सहायक ग्रेड- 03
3.	श्री तुलसी राम साहू	सहायक ग्रेड-03

यह आदेश तत्काल प्रभावशील होगा ।

सही/-

(चन्द्रकांत उइके)

संचालक

आदिम जाति तथा अनुसूचित जाति विकास

नया रायपुर, छत्तीसगढ़

14. By this order, the petitioners who were working in Chhattisgarh Urdu Academy, Raipur were directed to work in the office of respondent No.2, as such, neither their headquarter is changed nor to take up the duties of a new post and therefore it does not fall within the meaning of “transfer” as defined in Rule 17 (Chapter II) of the Fundamental Rules.
15. Since the impugned order is not an order of transfer admittedly and there is no dispute that the services of the petitioners were sent on deputation to the Department of SC & ST Development and respondent No.2 is Director / Commissioner of the said Department, it is well within the jurisdiction of respondent No.2 to call his employees who were earlier posted in the office of respondent No.2. Since it is not transfer and merely a change of posting from the office of respondent No.3 to the office of respondent No.2, the impugned order

cannot be held to be passed by an incompetent officer as strongly canvassed by Mr. B.P. Sharma, learned counsel for the petitioners. As such, this argument fails and is hereby rejected. Similarly since the petitioners were on deputation with respondent No.2 and at his order/direction, they were posted at the office of respondent No.3, therefore, respondent No. 2 was well within its jurisdiction to call back the petitioners to perform their duties and as such, the respondent No.2 is well within its jurisdiction.

16. The next submission of Mr. B.P. Sharma is that the impugned order has been passed in violation of the transfer policy issued by the Government. It is already held that the impugned order is an order of simple change of posting of the petitioners for the sake of administrative convenience by respondent No.2 and there is no change of headquarter (office of respondent No.3 to office of respondent No.2), it cannot be termed to be an order of transfer and therefore the transfer policy would not be applicable and as such, the decision rendered by the Supreme Court in Anjan Sanyal's case (supra) in which their Lordships have delineated the scope of judicial review of transfer order holding that transfer order should not be lightly interfered with unless mala fide, or prohibited by service rules, or passed by an incompetent authority, would not apply. The ground of mala fide is alleged against respondent No.4, but here, the order of posting has not been passed by respondent No.4, it has been passed by respondent No.2, therefore, the question of mala fide does not arise. It has also been stated by the learned State counsel that the petitioners had already joined in their new place of posting on 5-4-2017.

17. In view of the aforesaid analysis, this Court is of the considered opinion that the order dated 20-9-2016 need not be interfered with in exercise of power and jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petitions deserve to be and are hereby dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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