

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 6.4.2021

Judgment delivered on 8/4/2021

WA No. 21 of 2021**(Arising out of the order dated 17.12.2020 passed by learned
Single Judge in WPS No.5333/2020)**

- Pandeshwar Sai S/o Shri Jadura Sai, aged about 60 years
Presently Working as Chief Engineer, Public Works
Department, Bastar Zone, Jagdalpur, District Bastar (CG)

---- Appellant/Petitioner**Versus**

1. State of Chhattisgarh, through the Secretary, Public Works
Department, Mahanadi Bhawan, Nawa Raipur, District Raipur.
2. The Under Secretary, Public Works Department, Mahanadi
Bhawan, Nawa Raipur, District Raipur (CG)
3. G.R. Ravate, working as Superintending Engineer, Public
Works Department, Kanker Circle, District Kanker (CG)

---- Respondents

For Appellant	:	Mr. B.D. Guru, Advocate
For Respondent No.1 & 2	:	Mr. Ashish Tiwari, Govt. Advocate
For Respondent No.3	:	Mr. K. Rohan, Advocate

Hon'ble Shri PR Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

CAV Order**Per Parth Prateem Sahu, J**

1. Challenge in this appeal is to the order dated 17.12.2020
passed by the learned Single Judge dismissing writ petition
filed by petitioner/appellant against his transfer from Bastar,
Jagdalpur to the office of Engineer-in-Chief, Public Works
Department, Raipur.
2. Facts projected in the writ petition are that vide order dated

29.5.2020 the petitioner was promoted to the post of Chief Engineer and posted at PWD, Bastar Circle, Jagdalpur. Vide order dated 15.9.2020 the petitioner has been transferred from Jagdalpur to Raipur and posted as General Manager, Chhattisgarh Road Development Corporation, Raipur. Said order of transfer was put to challenge by petitioner in WPS No.3801/2020. Upon hearing the parties, the learned Single Judge passed an interim order of stay in favour of petitioner/ appellant herein. During pendency of writ petition, vide order dated 28.11.2020 the petitioner was again transferred and posted as Chief Engineer (Research, Design & Development) in the office of the Engineer-in-Chief, PWD, Raipur by amending earlier order of transfer dated 15.9.2020. This order dated 28.11.2020 was also put to challenge in WPS No.5333/2020 which came to be dismissed vide order impugned.

3. Respondent Nos.1 & 2 submitted their response to pleadings made in writ appeal mentioning that it is not the case that appellant was posted in Jagdalpur on 29.5.2020 only, in fact appellant was posted in Jagdalpur on 2.7.2019 as In-charge Chief Engineer. Post of General Manager, CG Road Development Corporation, which is one of the important posts to deal with the matters involving high stakes, is lying vacant on which a Chief Engineer of Public Works Department is to be posted. Appellant has completed more than one year of service at his present place of posting. Transfer is made under

administrative exigency and public interest. Appellant being a government servant cannot claim as a matter of right to be posted at the place of his choice. It is the prerogative of the employer to post its employees/officers depending upon exigency of service. Contention of appellant that petitioner was transferred on account of ill-will or malice is not correct. Appellant has not made any specific allegation against any person. Allegations levelled by appellant are baseless.

4. Respondent No.3 submitted reply pleading therein that in pursuance of the order dated 28.11.2020 respondent No.3 has assumed the charge on 2.12.2020. Appellant is desirous to be posted in the office of Chief Engineer, Jagdalpur even after completion of substantial length of service. After passing of the order of transfer, the appellant has filed an application for grant of medical leave of 21 days on the ground that he has been tested positive for Covid-19 and is under home isolation after 3.12.2020. However, he has preferred writ petition on 6.12.2020 i.e. within three days from the date he tested Covid-19 positive. Respondent No.3 is senior most Superintending Engineer and holding said post since 26.8.2009. Next promotional post is Chief Engineer. He is having much experience to discharge the duties of In-charge Chief Engineer.
5. Mr. B.D. Guru, learned counsel for petitioner/appellant submits that action on the part of the respondent authorities in issuing order of Annexure P-1 dated 28.11.2020 is arbitrary. Order

Annexure P-1 was passed during the pendency of WPS No.3801/2020 in which there was an interim order in favour of appellant. He submits that the order Annexure P-1 is passed only to accommodate respondent No.3, who is holding substantive post of Superintending Engineer. Respondent No.3 has been posted as In-charge Chief Engineer after removing petitioner/appellant who is senior to respondent No.3 and holding substantive post of Chief Engineer. There was no administrative exigency in transferring appellant from the office of Chief Engineer, Jagdalpur to the office of Engineer-in-Chief, Raipur within a short span of time as appellant was posted in Bastar on 29.5.2020 only. Departmental enquiry against respondent No.3 is pending at Jagdalpur. He submits that appellant has been transferred at the fag end of his service as the appellant is going to attain age of superannuation in the month of May, 2022.

6. After hearing learned counsel for the parties, on 18.3.2021 this Court directed the learned State Counsel to produce records/note sheets considering the transfer of appellant and also with regard to status of vacancies of Chief Engineer on the date of issuance of order dated 15.9.202 in the office of Engineer-in-Chief, Raipur. Date of posting of appellant as In-charge Chief Engineer, PWD, Bastar Circle, Jagdalpur is not disputed by appellant, hence it cannot be said that appellant has been posted at the aforementioned place only on 29.5.2020. Transfer order dated 15.9.2020 transferring

appellant as General Manager, CG Road Development Corporation was interdicted on legal ground that an employee/officer cannot be posted by way of transfer in other department without his consent because the posting by way of transfer in another department amounts to deputation. Learned Single Judge has rightly passed interim order on 24.9.2020 which is only with respect to staying effect and operation of the order dated 15.9.2020 till next date of hearing. Respondent authorities have reconsidered and issued amended order Annexure P-1 transferring appellant to the office of Engineer-in-Chief, Raipur as Chief Engineer (RDD) within department.

7. Learned State Counsel has made submission that on the date of transfer of appellant as General Manager, CG Road Development Corporation, Raipur, out of four sanctioned posts of Chief Engineer in the office of the Engineer-in-Chief, Raipur, two posts were lying vacant. It is pointed out that post of General Manager in the CG Road Development Corporation was lying vacant and the Corporation is also having equivalent budget, scope of work, to deal with matters involving high stakes and the officer to be posted as General Manager to be rank of Chief Engineer. Respondent No.1 in administrative exigency has posted appellant as General Manager. As the said order was challenged on legal grounds that no consent of appellant was obtained before passing it, the same was amended. On the date of issuance of second transfer order

Annexure P-1, again the respondent authorities have reconsidered and on that date only one post of Chief Engineer has been occupied by the person holding substantive post of Chief Engineer and three persons were working as In-charge. He submits that as four posts of Chief Engineers are available in the office of Engineer-in-Chief, Raipur where important works under different branches like planning, tender, administration, research, designs and development, are to be dealt with, therefore, posting of senior officer is required. Appellant being senior most has been posted as Chief Engineer, Research, Design & Development (RDD) under administrative exigency.

8. To appreciate submissions made by learned State Counsel, we have perused the records placed before us. Upon going through the records, we are convinced with the submissions made by learned counsel for respondent State that order of transfer has been passed considering the administrative exigency only and not with any malafide. Appellant is holding higher post of Chief Engineer which is a transferable post. Appellant has served more than a year in the office at Jagdalpur and after his promotion on the substantive post of Chief Engineer, appellant has become eligible to hold more responsible post which is to be considered by the employer for better utilization of his services. The learned Single Judge has dealt with the grounds raised by appellant with regard to issuance of transfer order of appellant to be contrary to the

transfer policy of the State Government and held that policies are mere guidelines and not the statutory provisions. Learned Single Judge relying upon rulings of Hon'ble Supreme Court in **Chief Commercial Manager, South Central Railway, Secundarabad & ors vs. G. Ratnam & ors** reported in (2007) 8 SCC 212; **Airport Authority of India vs. Rajeev Ratan Pandey & ors** reported in (2009) 8 SCC 337; **High Court of Judicature of Madras vs. R. Perachi** reported in (2011) 12 SCC 137, dismissed writ petition.

9. Considering the entire facts and circumstances of the case projected by both sides, we do not find any infirmity in the order passed by the learned Single Judge calling interference of this Court. Appeal being devoid of any merit is liable to be and is hereby dismissed.

10. Original record along with two envelopes are returned to learned State Counsel.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-