

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS NO. 652 OF 2021**

Sunil Kumar Kamalsen S/o Uttara Kumar Kamalsen, aged about 29 years, presently posted as Pharmacist Ayurved at Government Ayurved Hospital Muli, District Bastar (CG)

... Petitioner

versus

1. State of Chhattisgarh, through the Secretary, Department of Health and Family Welfare, Mantralaya, Atal Nagar, Raipur, District Raipur (CG)
2. Under Secretary, Department of Health and Family Welfare, Mantralaya, Atal Nagar, Raipur, District Raipur (CG)
3. Deputy Secretary, Department of Health and Family Welfare, Mantralaya, Atal Nagar, Raipur, District Raipur (CG)
4. District Ayurved Medical Officer, District Bastar (CG)

... Respondents

For Petitioner	:	Mr. Ishan Verma, Advocate.
For Respondents/State	:	Mr. Rahul Jha, Mr. Sudeep Verma, and Ms. Akansha Jain, Dy. Govt. Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01/03/2021

1. Challenge in the present Writ Petition is to the order of transfer, dated 15.9.2020 (Annexure P-3), and also to the order dated 2.1.2021 (Annexure P-1) whereby the representation of Petitioner has been rejected by Respondent No.1.
2. The matter is related to transfer of Petitioner from one place to another.
3. Facts of the case are that, the Petitioner was appointed as Pharmacist Ayurved and was posted at Government Ayurved Hospital, Muli, District Bastar way back in the year 2009 and since then he is working at the said place. However, subsequently, he was transferred from Government Ayurved Hospital, Muli, District Bastar to Primary Health Centre, Nelasnar, District Bijapur, vide order dated 15.9.2020 (Annexure P-3). The said order was subjected to challenge in W.P.S. No. 3997/2020 which got disposed of on 8.10.2020 permitting the Petitioner to prefer a representation and till the representation is decided an interim protection was also granted in favour of Petitioner. Subsequently, the Petitioner made a representation to the authorities concerned which now stands rejected by the impugned order dated 2.1.2021 (Annexure P-1), leading to the filing of the present Writ Petition.

4. The primary challenge to the impugned order of transfer as also to the order of rejection of the representation of Petitioner is that the same are in violation of the transfer policy of the State Government and the instructions which have been issued by the State Government so far as transfer of employees is concerned.

5. Learned Counsel for Petitioner submits that, having worked at a Scheduled Area for a considerable long period of time, the Petitioner was entitled to be posted in a Non-Scheduled Area, which has not been taken note of by the authorities concerned while deciding the representation. It was also the contention of learned Counsel for Petitioner that the Petitioner in his representation had specifically pleaded that he is ready to move out of Muli, District Bastar subject to Respondents posting him to a Non-Scheduled Area in terms of the instructions of the State Government and for this also the rejection of his representation as also the issuance of the order of transfer is bad. Learned Counsel for Petitioner further submits that this Court has while disposing of the earlier round of litigation permitted the Petitioner to raise these grounds before Respondents and the Respondents were incumbent to consider these aspects while deciding the representation of Petitioner.

6. Per contra, learned State Counsel opposing the present Writ Petition submits that the Petitioner has already put in more than a decade of service at one place and on the administrative exigencies the order of transfer dated 15.9.2020 was issued and as such there is no illegality or malafide in the issuance of the same. According to learned State Counsel, the order of transfer also was not in particular for the Petitioner alone but was also for a group of employees who were posted from one place to another and as such there is no malafide attributed to the impugned order. Learned State Counsel referring to the order of rejection of the representation of Petitioner submits that while considering the representation the Respondents have specifically mentioned that the need for issuance of transfer order was to ensure that sufficient medical staffs are provided at different Health Centers of the State Government and with this administrative

exigency if the order of transfer is made the same cannot be interfered by the High Court under Article 226 of the Constitution of India as a matter of routine. Learned State Counsel thus prayed for the dismissal of the present Writ Petition.

7. Having heard the contentions put forth on either side and on perusal of record, the admitted factual position from the pleadings is that the Petitioner has put in more than 10-11 years of service at the present place of posting, i.e., Muli, District Bastar. The tenure of posting of Petitioner itself is sufficient to draw an inference that the impugned order of transfer is neither malafide nor arbitrary and the same has been issued on administrative exigencies.

8. Another factual position which requires to be considered is the fact that while rejecting the representation of Petitioner the Respondents have taken note of an administrative exigency that arose in the issuance of the transfer order and held that the same has been done ensuring uniform posting of health workers at different Health Centers of the State Government and which again is a ground which is exclusively within the domain of the State Government to decide which employee/officer has to be posted where and for what duration and the High Court in exercise of writ jurisdiction would not have any power to subject the said order to judicial review unless there is an allegation of malafides or the order of transfer being contrary to the service laws and service regulations etc.

9. The law so far as transfer is concerned is by now well settled by a catena of decisions starting from the landmark decision in the case of **Union of India & Others Vs. S.L. Abbas, 1993 (4) SCC 357**, wherein the Hon'ble Supreme Court has itself in a very categorical term held that the instructions and policies of transfer of employees framed by the Government are in the nature of guidelines and do not have a statutory force for being implemented by the Court in writ jurisdiction. The principles of law have been further enunciated by the Hon'ble Supreme Court repeatedly in a series of judgments till now and wherein time and again it has been held that so far as transfer is concerned the same is an incident of service and cannot be subjected to judicial review, particularly exercising the writ jurisdiction, unless the same is assailed on the ground of having been issued

with malafide or where the grounds raised are of competency of the authorities and also where the grounds of challenge being in contravention to the service rules governing the field.

10. In the instant case, none of the aforesaid grounds are the grounds of challenge to the impugned order of transfer. Petitioner after having put in more than a decade of service at a particular place has been shifted to a nearby location, of course in the Scheduled Area, and merely because his place of posting was more in the Scheduled Area that does not mean that the order of transfer is bad in law or is issued with malafide.

11. This Court therefore does not find any strong case made out by Petitioner calling for interference with the impugned orders. Writ Petition thus deserves to be and is accordingly dismissed.

12. However, the dismissal of the present Writ Petition would not preclude the Petitioner from approaching the State authorities by way of a fresh representation seeking for a suitable place of posting to a Non-Scheduled Area in accordance with the policy of the State Government and which if made, the authorities shall consider and decide the same on its own merits in accordance with the policy governing the field.

13. Writ Petition accordingly stands dismissed.

/Sharad/

Sd/-
(P. Sam Koshy)
JUDGE