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HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 120 of 2021**

{Arising out of Order dated 01/03/2021 passed in Writ Petition(S) No. 656 /2021 by the learned Single Judge}

- Pradeep Kumar Kaushik S/o late Amrit Lal Kaushik, aged about 36 years, Presently Posted as Pharmacist Ayurved at Community Health Centre Nangur, District -Bastar Chhattisgarh. **---Appellant**

VERSUS

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

-----Respondents

For Appellant	:	Mr. Ishan Verma, Advocate.
For Respondent-State	:	Mr. Vikram Sharma, Dy. Govt. Adv.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****08/04/2021**

1. Correctness and sustainability of the impugned order dated 01.03.2021 passed in WPS No. 656/2021 is put to challenge in this appeal, whereby learned Single Judge declined to grant relief as sought for by the appellant, reserving right for filing a fresh representation seeking for a suitable place of posting to a Non-Scheduled Area.
2. Relevant facts for disposal of this appeal are that the appellant was initially appointed on the post of Pharmacist Ayurved on 22.07.2013 and posted at Community Health Centre, Nangur, District Bastar, Chhattisgarh. He was transferred from Community Health Centre, Nangur to Primary Health Centre, Kaushalnaar, District Bijapur, Chhattisgarh vide order dated 15.09.2020 (Annexure A-4). Order of transfer was put to challenge in Writ Petition (s) No.

3995/2020, which was disposed of *vide* order dated 08.10.2020, permitting the petitioner to file representation before the Competent Authority and till decision of the representation, interim protection of staying effect of order of transfer of the appellant has been passed in favour of the appellant. Representation filed by the appellant came to be rejected *vide* order dated 02.01.2021, stating therein that the order of transfer has been passed in accordance with the Transfer Policy after taking approval of the Co-ordination Committee and the transfer order is issued under administrative exigency. Order of rejection of representation was put to challenge in another writ petition as WPS No. 656/2021, which also came to be dismissed by the impugned order.

3. Mr. Ishan Verma, learned counsel for the appellant submits that the learned Single Judge has not considered the ground raised by the appellant in proper manner, that as per the Circular issued by the State Government dated 03.06.2015, the appellant who has worked in scheduled area for a considerable period of time, should have been transferred in the non-scheduled area, the representation submitted by the appellant has been decided in a very mechanical manner and has not considered the representation filed by the appellant separately but the orders have been passed considering the representation filed by six of the employees. He further contended that in earlier round of litigation, in WPS No. 3995/2020, learned Single Judge considering the grounds raised by the appellant to be proper has given the interim protection. The identical issue came before the Division Bench of this Court in WA No. 549/2016 (*Chonhas Toppo v. State of Chhattisgarh*), wherein the Hon'ble Division Bench has allowed the appeal and directed for posting of appellant therein in non-scheduled area, hence, the impugned order is liable to be interdicted.
4. Controverting the submission made by learned counsel for the appellant, Mr. Vikram Sharma, learned Deputy Government Advocate submits that the appellant is working under the Department of Health and Family Welfare, he

was posted since last seven years continuously only at one place ie. Community Health Centre, Nangur, Bastar. Respondent authority considering the requirement of services of Pharmacist working in the Health Department to be posted in the Primary Health Centre to provide better medical facilities to all the citizens, even if they are residing in remote area. The order of transfer has been passed only on administrative ground, no malafide act has been alleged against any of the Officer. He further pointed out that the appellant before issuance of order of transfer has not made any application for posting to non-scheduled area as he has raised ground in this appeal, this ground has been raised only after issuance of transfer order. Learned Single Judge has already reserved the right of the appellant for approaching the State Authority by way of fresh representation. Learned Single Judge considering the judgment passed by Hon'ble Supreme Court in **Union of India and others v. S.L. Abbas, 1993 (4) SCC 357**, has passed the order which is within the four walls of law and does not call for any interference.

5. We have heard learned counsel for the appellant as well as learned Deputy Government Advocate representing the State.
6. The only ground raised by the appellant is with regard to the fact that since his date of appointment, he is continuously posted and working in scheduled area ie. for last seven years, hence, as per the Circular dated 03.06.2015 issued by the State Government, appellant is entitled for his posting in non-scheduled area. The appellant/ petitioner, prior to the issuance of order of transfer on 15.09.2020, has not made any application for his posting based on the Circular dated 03.06.2015. Hon'ble Supreme Court in case of **S.L. Abbas (supra)** has considered effect of policy/circular/instruction and held that the policy/circular/instruction of transfer of employees issued by the Government are in nature of guidelines, it cannot have any statutory force. The Circulars/ policy framed by the State Government/ employer is for the convenience of the employer and the employee for better administration. It is for the employer who is

having the exclusive jurisdiction to post any employee at a particular place of posting looking to the need and better utilization of their services.

7. In the case at hand, the appellant is an employee of Medical and Health Department, has been posted to provide proper medical facilities to the citizens residing in the remote villages/ areas. The order of deciding the representation submitted by the appellant has been considered by the Competent authority and dismissed the same recording that the transfer of the appellant and others was after placing the file before the Co-ordination Committee and after its approval only. Transfer order has been issued on administrative ground, it is the respondent-authority who could be the best judge to examine the need of the hour and administrative exigency to post any employee more so when it is a Covid-19 pandemic situation. Appellant holds a transferable post and he could not choose a place of posting by his own. Learned Single Judge while dismissing the writ petition has observed as under:

“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.

8. For the foregoing reasons, we do not find any infirmity in the impugned order dismissing the writ petition. Appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly. However, in view of the right reserved by the learned Single Judge in favour of the appellant for filing a fresh representation seeking suitable place of posting in pursuance of Circular dated 03.06.2015, we direct that if such a representation is filed by the appellant, the Respondent-Authorities will consider the same in accordance with law on its own merits within a period of four weeks from the date of receipt of representation.

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

Sd/-
(Parth Prateem Sahu)
Judge