

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on: 02/02/2021****Order Delivered on : 11/02/2021****Review Petition No. 105 of 2020***{Arising out of Order dated 14.02.2020 passed in Writ Appeal No. 618 of 2019 by the learned Division Bench}*

Shri Vijay Jamnik S/o Shri L.A. Jamnik, aged about 55 years, presently posted as In-Charge Executive Engineer, Water Resources Division, Jashpur Chhattisgarh.

---- Applicant**Versus**

1. State of Chhattisgarh, through Secretary, Water Resources Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
2. Engineer-In-Chief, Water Resources Department, Shivnath Bhawan, Naya Raipur, District Raipur Chhattisgarh.
3. Chief Engineer, Ganga Kachhar, Water Resources Department, Ambikapur, District Ambikapur Chhattisgarh
4. Dalso Ram Darro S/o Raghunath Darro, aged about 58 years, R/o Quarter No. F /1, Irrigation Colony, Barpali, Korba, District Korba Chhattisgarh.

---- Non-Applicants

For Applicant	: Shri Ashok Kumar Verma, Shri Animesh Verma and Shri Gajendra Sahu, Advocates.
For Respondent No. 1 to 3	: Shri Ashish Tiwari, Government Advocate.
For Respondent No. 4	: Shri Praveen Das, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order**Per P.R. Ramachandra Menon, Chief Justice**

1. The verdict passed by this Court in Writ Appeal No. 618 of 2019 preferred by the 4th Respondent herein (Writ Petitioner) allowing the appeal and interdicting the verdict passed by the learned Single Judge, granting the relief to the Writ Petitioner to the extent as mentioned therein, is sought to be reviewed at the instance of the 4th Respondent in the Writ Appeal/Writ Petition.
2. Annexure A/2 and A/5 orders transferring the Appellant, who is already holding the cadre and working as Executive Engineer, to accommodate the

4th Respondent/Review Petitioner who is only an Assistant Engineer (giving the charge of the Executive Engineer), in total disregard to the clear mandate of Clause 2.14 of the transfer norms, was the subject matter of challenge in the writ petition. The learned Single Judge declined interference which hence was sought to be interdicted by filing the appeal.

3. After making a threadbare analysis of the facts and figures, based on the the submissions raised by the parties on both the sides, it was clearly held by this Court that the course pursued by the Respondents concerned did not demonstrate any administrative exigency, simultaneously observing that even by the farthest stretch of imagination, the knowledge, skill and experience gathered by 4th Respondent therein (Review Petitioner herein), who was only an Assistant Engineer to function as "Executive Engineer In-charge", can only be lesser than the said traits gathered by the Appellant/Writ Petitioner, who was already holding the post of Executive Engineer for more than 1½ decades i.e. from 2004, more so when there was no complaint against the service of the Appellant/Writ Petitioner. It was further observed that infringement of Clause 2.14 of the transfer norms was not explained from the part of the official Respondents, which virtually prohibits the filling of the post by giving charge to a junior officer in the lower rank after transferring the senior holding the higher cadre from the said cadre post, unless the exigency was so imminent to effect such an arrangement. This Court observed that posting an Assistant Engineer with much lesser experience giving the charge of the Executive Engineer, after shifting the Executive Engineer having an experience of 15 years in the said cadre, could not be certified as an instance of administrative exigency but was an instance of extending undue favours to the 4th Respondent in the appeal/writ petition (Review Petitioner herein) who cannot claim posting as an "Executive Engineer In-charge", as a matter of right. It was accordingly that the relief was moulded in paragraph 16 in the following lines:

"16. In the above circumstances, we find that the issue projected before the learned Single Judge has not been properly considered and it requires interference. The Appellant has succeeded in establishing his case and the Respondents have miserably failed in demonstrating a fair deal/exercise with regard to the transfer ordered. In the above circumstance, Annexure A/2 order dated 09.08.2019 insofar as the Appellant and the 4th Respondents are concerned and the Annexure A/5 order dated 23.08.2019 whereby the Annexure A/3 order of the same date i.e. 23.08.2019, was recalled, stand set aside. The Appellant, who is continuing as Executive Engineer at Jashpur, by virtue of the interim order of '*status quo*' passed by this Court on 20.12.2019 and being extended thereafter, is permitted to continue in the post of Executive Engineer at Water Resources Division, Jashpur till the next general transfer. It shall be the look out of the Respondents 1 to 3 to give appropriate posting to the 4th Respondent."

4. We heard the learned counsel for the Review Petitioner at length and so also the learned counsel representing the State/Respondents No. 1 to 3; as well as the learned counsel representing the 4th Respondent/Writ Petitioner.
5. Considering the nature of pleadings, prayers and submissions put forth, it is seen that the attempt of the Review Petitioner is only to have a "re-hearing", that too, without any merit in the grounds raised. There is no error apparent on the face of record. It is settled law that the power of review cannot be exercised as a matter of course or as a substitute for appeal. We find support from the ruling rendered by the Apex Court in Meera Bhanja case. ***Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.)***; {(1995) 1 SCC 170}.
6. In the said circumstance, the review petition stands dismissed.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE