NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.292 of 2012

Smt.Sanjana Raj W/o Shri Anish Raj, aged about 41 years, Occupation-Assistant Grade II, Office of Director Tribal Research and Training Institute, Raipur, Dist-Raipur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Department of Tribal Development, Mantralaya, D.K.S.Bhawan Raipur, District Raipur (CG)
2. Director, Tribal Reserach and Training Institute, Raipur, Dist Raipur (CG)
3. Assistant Commissioner, Tribal Development, Durg, District Durg (CG)
4. Shri M.S. Paraste, Director, Tribal Research and Training Institute, Raipur, Dist. Raipur (CG)

---- Respondents

For Petitioner : Ms Deepali Pandey, Advocate
For Respondents No.1 to 3: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

16.6.2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner calls in question legality and validity of the order dated 9.1.2012 passed by the Joint Secretary, Department of Tribal Development, Raipur, whereby the petitioner's transfer order dated 22.9.2011 has been cancelled and he has been posted at the office of the Assistant Commissioner, Durg.
3. Ms Deepali Pandey, learned counsel for the petitioner, would submit that the petitioner was transferred from

the office of Assistant Commissioner, Tribal Development, Durg to the office of Assistant Commissioner, Tribal Development, Raipur by order dated 22.9.2010 (Annexure P-9) and thereafter that order was modified on 23.7.2011 (Annexure P-11) which he has joined and thereafter at the instance of respondent No.4, order dated 22.9.2010 (Annexure P-9) and order dated 23.7.2011 (Annexure P-11) both have been recalled by the impugned order dated 9.1.2012 (Annexure P-1). She would further submit that executed order cannot be cancelled and therefore, the impugned order dated 9.1.2012 (Annexure P-1) deserves to be set aside. She would rely upon the decision of this Court in the mater of **Rajesh Kumar Suman v. State of Chhattisgarh and others (WPS No.9176 of 2019)**, decided on 11.11.2019.

4. On the other hand, Mr.Ravi Bhagat, learned Deputy Government Advocate for respondents No.1 to 3/State, would submit that for want of post, order dated 22.9.2010 (Annexure P-9) and order dated 23.7.2011 (Annexure P-11) both have been recalled.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. This Court in **Rajesh Kumar Suman** (supra) relying upon the decision of this Court in **Kaushal Yadav v. State of Chhattisgarh & Anr.** (WPS No.3544 of 2017, decided on 30.10.2017) held as under:-

> "4. This Court in the case of Kaushal Yadav Vs. State of Chhattisgarh & anr. (WPS No.3544 of 2017, decided on 30.10.2017) has observed thus:
>
> 3) This Court, in the identical matters i.e. Brajendra Singh v. State of Chhattisgarh & Others[1], Dr. Toshan Lal Todar v. State of Chhattisgarh & Others[2] and Khubchand Verma v. State of Chhattisgarh & Others[3] observed that once the transfer order is executed, the same cannot be cancelled. It was further observed that the employer is always at liberty to pass an order of transfer and posting the employee keeping in view the administrative exigency and public interest.
>
> 4)The Division Bench of this Court in Tarun Kanungo v. State of Chhattisgarh & Others[4], held thus:
>
> > "3. The question for cancellation of an order not in existence does not arise. The only option available to the authorities was to issue any fresh orders. We may appropriately refer to two Bench decisions in 2000 (2) PLJR 332 (Smt.Jyotsna Kumari v. The State of Bihar) and 2000 (3)PLJR 139 (Mahmood Azam Siddique v. The State of Bihar) observing as follows:
> >
> > > '12. Now it is a settled law that once an order of transfer issued and acted upon, it is spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant.'

1 WPS No.5012 of 2009, decided on 9.3.2010
2 WPS No.855 of 2012, decided on 27.2.2012
3 WPS No.1054 of 2012, decided on 2.3.2012
4 WA No.248 of 2015 (decided on 15.5.2015)

> 5) In view of the above, the impugned order is quashed. However, liberty is reserved in favour of the respondents to pass fresh order depending upon the administrative exigency, in accordance with the transfer policy."

7. In that view of the matter, since the case of the petitioner is covered by principle of law laid down by this Court in **Kaushal Yada**v (supra) followed in **Rajesh Kumar Suman** (supra), therefore, the impugned order dated 9.1.2012 (Annexure P-1) is hereby set aside. However, the respondents are at liberty to pass a fresh order depending upon the administrative exigency in accordance with transfer policy.

8. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-