

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 3340 of 2021

1. Ramadheen Sahu S/o Late Kori Lal Sahu Aged About 55 Years R/o Village -Kanapod, Post - Lakhanpuri, Tahsil - Charama, District - Kanker (Chhattisgarh).

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Director, Directorate of Public Instruction, Indrawati Bhawan, Nava Raipur, Distt.- Raipur (Chhattisgarh)
2. Commissioner Bastar Division, Distt.- Jagdalpur (Chhattisgarh)
3. Divisional Joint Director Directorate of Public Instruction, Bastar Division, Distt.- Jagdalpur (Chhattisgarh)
4. Netram Sahu S/o Tikait Ram Sahu Aged About 54 Years R/o Village - Kanapod, Post - Lakhanpuri, Charama, Distt.- Kanker (Chhattisgarh)
5. Mohan Jaiswal S/o Abhay Ram Jaiswal Aged About 54 Years R/o Village - Jhipatola, Post - Lakhanpuri, Charama, Distt.- Kanker (Chhattisgarh)

---Respondents

For Petitioner	:	Shri AV Shridhar, Advocate.
For Respondents	:	Shri Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07.07.2021

1. Challenge in the present writ petition is to the order dated 08.06.2021 whereby the services of the petitioner has been shifted from Middle School Udkuda, Block Charama to Middle School Piprodh, Block Charama.
2. The petitioner earlier was again subjected to transfer by an order of respondent No.3 vide order dated 27.05.2021 whereby the petitioner was shifted from Middle School Bagdontgari, Block Charama to Middle School Udkuda, Block Charama. The said order was duly complied by the petitioner and he was relieved from Bagdongari and gave his joining at Udkuda on 05.06.2021. Annexure P/3 is the document in this regard which

also has an endorsement to the Headmaster of the School where the petitioner gave his joining showing joining to be that of 05.06.2021.

3. It is subsequent to this that the impugned order dated 08.06.2021 has been passed whereby the earlier order dated 27.05.2021 has been ordered to be amended/modified, modifying the place of posting from Middle School Udkuda to Middle School Piprodh.
4. The issue involved in the present writ petition is whether an order which already stands complied with particularly an order of transfer or posting, can it be modified or amended. This issue is no longer res integra for the reason that there is catena of decisions of this court on the issue that once when a person pursuant to an order of transfer stands relieved and the employee also gives his joining at the transferred place, the order stands executed in its letter and spirit. Once an order gets executed, there cannot be modification or amendment to that order. The only option or the remedy available with the respondents would be to pass a fresh order in the event of any administrative exigency that arises.
5. It would be relevant at this stage to refer to an order of this court in case of Vivek Hardeo Vs. State of Chhattisgarh & Ors., WPS 1015 of 2015 wherein in paragraphs 2 to 5 this court dealing with similar issue has held as under:

“2. Shri Sharma, learned counsel for the petitioner would submit that pursuant to the order dated 15-7-2014 the petitioner was relieved from Janjgir-Champa on 22-7-2014 and thereafter, joined at Mahasamund on 23-7-2014, therefore, once the order has been executed nothing remained for cancellation.

3. Learned counsel for the State would submit that transfer being an exigency of service, the State Government is competent to

pass an order canceling the previous transfer order if it is executed. He would further submit that the order of cancellation occasioned because there were complaints against the petitioner.

4. Be that as it may, the Division Bench of this Court in *Tarun Kanungo v. State of Chhattisgarh & Others*¹, 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.'

5. In view of the above, the impugned order dated 16-3-2015 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.”

6. The aforesaid judgment has further been followed by various Benches of this Court in series of writ petitions of similar nature.
7. Given the said facts, circumstances and the judicial pronouncements on the field by this court, this court has no hesitation in holding that the impugned order dated 08.06.2021 so far as shifting of the place of posting of the petitioner is concerned, is not tenable. The same deserves to be and is hereby set aside/quashed. However, the right of the respondents

stand reserved to pass a fresh order in accordance with rules governing the field in the event of any administrative exigency so demands.

8. With the aforesaid liberty to the State, the writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder