

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4258 of 2021**

Smt. Gayatri Verma W/o Shri Santosh Kumar Mehuriya Aged About 40 Years R/o Quarter No. F/2, Behind LIC Building, Kosabadi, Korba, Police Station- City Kotwali, Tahsil And District- Korba, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Home/Police, Mahanadi Bhawan, Mantralaya, Police Station And Post- Rakhi, Atal Nagar, New Raipur, District- Raipur, Chhattisgarh.
2. Chairman Police Establishment Board/ Director General Of Police, Police Headquarter (Phq), Police Station And Post- Rakhi, Atal Nagar, New Raipur, District- Raipur, Chhattisgarh.
3. Members Police Establishment Board, Police Headquarter (Phq), Police Station And Post- Rakhi, Atal Nagar, New Raipur, District- Raipur, Chhattisgarh.
4. Inspector General Of Police (Igp) Intelligence, Police Headquarter (Phq), Police Station And Post- Rakhi, Atal Nagar, New Raipur, District- Raipur, Chhattisgarh.
5. Zonal Superintendent Of Police Office Of Zonal S.P. Special Branch, 27 Kholi, Bilaspur, District- Bilaspur, Chhattisgarh.

----Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate with Ms. Laxmeen Kashyap, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G. Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/09/2021**

1. Aggrieved by the impugned order Annexure P/1 dated 25.03.2021 the present writ petition has been filed. Vide the impugned order the petitioner has been transferred from Special Branch Korba to Special Branch Gourela-Pendra-Marwahi. The impugned order of transfer has

been issued by the Inspector General of Police (Intelligence), Government of Chhattisgarh.

2. The solitary contention or challenge to the impugned order is on the power exercised by the Inspector General of Police (Intelligence) i.e. the respondent No.4 in issuing the impugned order. The contention of the petitioner is that the respondent No.4 was not the competent authority, who has issued the order of transfer.
3. According to the petitioner, she was working on the post of Inspector and as regards transfer of the police personnel of the rank up till the level of Inspector, the transfer could have been made only at the instance of Police Establishment Board constituted under the provisions of Section 22 of the Chhattisgarh Police Act, 2017. Another ground which the petitioner has raised is that in the past also the petitioner was subjected to transfer on 10.09.2018 transferring the petitioner from Special Branch Korba to Special Bilaspur. This order was also subjected to challenge before this High Court and considering the provisions of the Chhattisgarh Police Act and in particular the provision under Section 22 of the said Act, this Court had stayed the effect and operation of that order and had remitted the matter to the respondents to take an appropriate decision dealing with the aspect of competence of the Inspector General in issuing the order of transfer.
4. During the course of hearing, by way of a covering memo the petitioner has brought on record an order passed by the Additional Director General of Police (Intelligence) dated 24.10.2018 whereby

the earlier order dated 10.09.2018 was practically withdrawn and the petitioner was ordered to be retained at her earlier place of posting i.e. at Korba. This order of the Additional Director General of Police posting the petitioner back at District Korba itself amounts to accepting the contention of the petitioner that the original order of transfer dated 10.09.2018 was not by the competent authority. Therefore the impugned order this time again is bad for the same set of facts and reasons.

5. In addition to this the learned counsel for the petitioner submits that this High Court has in a series of decisions have interfered with such order of transfer of police personnel up till the rank of Inspector, who were transferred at the instance of the Inspector General, therefore this time also the impugned order is bad. The petitioner has enclosed couple of orders in this regard passed by this Court in past.
6. The State counsel on the other hand tried to submit that under the Chhattisgarh Police Act the Police Establishment has been divided into different Police zones taking into consideration the Geographical factors. Under Section 4 of the Act, each of the Police zones were to be headed by an officer of the rank of Inspector General of Police. Same section further envisages that the Inspector General would also have the administrative powers in the respective zone headed by him. Learned State counsel further tried to canvas that once when the Inspector General has been vested with the administrative powers on the personnel in the zone, it includes the power of the said authority to transfer a police personnel from one place to another within the zone.

7. Learned counsel for the respondent further submitted that since the Intelligence wing is directly under the control of the Intelligence Department in the State, therefore it is construed as one zonal body and in that backdrop the administrative head would be the Additional Director General of Police, who has passed the impugned order and therefore the impugned order does not warrant any interference at this stage.
8. The learned State counsel further tried to submit that the order has been made under administrative reasons and exigencies in as much as there were large number of complaints received against the petitioner and therefore for the better administration of the establishment, the petitioner has been transferred from Korba to Gourela-Pendra-Marwahi and for this reason also the High Court should not interfere with the order of transfer.
9. Having heard the contentions put forth on either side and on perusal of record what needs to be considered at this juncture is the fact that in the past there have been various litigations of similar nature, where the objection was that the order of transfer of a police personnel below the rank of Inspector can be done only by the Police Establishment Board not by any other officer and this Court has been interfering with the such order of transfer while grant of interim protection to the concerned police personnel leaving it open for the respondents to take an appropriate remedial steps. Surprisingly in all those cases wherein this Court had remitted the matter to the respondents, they have accepted the view of the Court and recalled all transfer orders earlier passed.

10. In the instant case also as regards the petitioner herself, this Court in the past had issued an order on 05.10.2018 in WPS No. 6596/2018, whereby the transfer of the petitioner from Korba to Bilaspur was under challenge. This Court granting an interim protection to the petitioner had left it for the respondents to take a decision and the respondents on due consideration of the claim allowed the petitioner to remain at Korba by recalling the order of transfer. Thereby the respondents themselves have accepted that the order of transfer at the behest of an Inspector General was not proper and that is why they were compelled to cancel the same and recall the petitioner at the original place of posting.
11. It would be relevant at this juncture to refer Section 22(2) under the Chhattisgarh Police Act, whereby the State had been expected to establish a Police Establishment Board and the Police Establishment Board thereby were conferred with certain functions. For ready reference Section 22 (2) of the Chhattisgarh Police Act is reproduced hereinunder:

“22. Police Establishment Board.-

(1) xxxxxx

(2) The Board shall perform the following functions and duties³

(a) Transfer of subordinate ranks up to the level of Inspector from one Zone or Range or District to another;

(b) Receive and examine representation from police officers aggrieved by any order of superior officers, other than the orders passed under the rule made under the Article 309 of the Constitution of India and-

I. Decide such representation if it is received from a police officer of the subordinate rank;

II. Make recommendation to the State Government in other cases.”

12. The plain reading of the aforesaid provision would clearly reflect that one of the primary functions, which have been introduced of the Police Establishment Board is pertaining to the transfer of police personnel of the sub-ordinate rank. Clause (a) of Section 22(2) of the Act specifically empowers the Police Establishment Board for transferring police personnel up to the rank of Inspector, which is inclusive of the personnel of the rank of Inspector. Nowhere under the Chhattisgarh Police Act is a non-obstantive clause available, which gives an additional power to the zonal head or for that matter any other superior officer to also exercise the power of transfer. The interpretation which the State counsel intends to give that the administrative power conferred under the Section 4 includes that of transfer would be *per se* contrary to Clause (a) of Sub-section (2) of Section 22 unless specifically reflecting such powers.
13. Moreover, during the course of the hearing it has been informed that the Police Establishment Board in the State of Chhattisgarh has been established and it is also functional. It has also been informed that the said Board has also been periodically issuing order of transfers also in respect of police personnel up to the rank of Inspector. Once when there is an agency or a body established under the Act for exercising certain powers conferred upon them, it is established that all transfers ought to had been made through the said agency alone and not by any other authority.
14. Another fact, which needs to be considered is that if at all if the order of transfer under challenge in this writ petition was one which was to be issued under the extraordinary situation that has arisen suddenly

or had to be issued under compulsion, there ought to had been firstly reason assigned for the same in the impugned order and moreover, the authority under which he is exercising, the powers also should had been reflected. Under the normal circumstances, the transfer can only be done through the Chhattisgarh Police Establishment Board as is provided under Clause (a) of Sub-section (2) of Section 22.

15. In view of the same, this Court is of the opinion that a strong case for allowing the writ petition has been made out. The impugned order Annexure P/1 so far as the petitioner is concerned therefore deserves to be and is accordingly quashed. The right of the respondents would however stand reserved to issue appropriate fresh order, if they so want, on administrative exigency, if any, in accordance with Chhattisgarh police Act and the order of transfer being issued by the Police Establishment Board.
16. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved