

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.354 of 2021**

R. K. Singhai S/o Late Shri D. C. Singhai Aged About 57 Years Posted Sub Divisional Officer (Regular Assistant Engineer) Water Resources Department Sub Division, Deobhog District Gariyaband Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Water Resources Department, Mahanadi Bhawan, New Mantralaya, Atal Nagar, Raipur District Raipur Chhattisgarh
2. Deepak Kumar Pathak (Temporary Assistant Engineer) On The Post Of Non Numeric At -Sub Division Deobhog, Water Resources Department District Gariyaband Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Appellant : Mr. Rajesh Kumar Kesharwani, Advocate

For Respondent/State : Mr. Ayaz Naved, Government Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Goutam Bhaduri, Judge****Judgment on Board****Per Arup Kumar Goswami, Chief Justice****11.11.2021**

Heard Mr. Rajesh Kumar Kesharwani, learned counsel for the appellant. Also heard Mr. Ayaz Naved, learned Government Advocate appearing for the State/respondent No.1.

2. This writ appeal is preferred against an order dated 03.09.2021 passed by the learned Single Judge in Writ Petition (S) No.3939 of 2021 whereby the learned Single Judge declined to interfere with the order of transfer, but provided that the appellant may prefer a representation before the authorities

concerned and in the event of filing of such representation, the authorities to consider the same on its own merit within a period of 45 days from the date of representation.

3. The appellant was working as a Sub Divisional Officer and by the order dated 22.07.2021, he has been transferred from Water Resources Department, Sub Division, Deobhog to the office of Engineer in Chief, Naya Raipur, Chhattisgarh as Assistant Engineer (Design) and in his place, respondent No.2 is transferred.

4. The plea taken in the writ petition is that the respondent No.2 is a temporary Assistant Engineer, because he is holding a non-numerical post and therefore, he could not have been transferred as Sub Divisional Officer, which post was held by the appellant on a regular basis.

5. Mr. Kesharwani submits that non-numerical post is a supernumerary post.

6. The learned Single Judge discussed the matter in detail and disposed of the same, observing as follows :

“4. Learned counsel appearing for the State opposing the petition drew attention of the court to a document Annexure R/4 dated 13.01.2020 issued from the Water Resources Department wherein it has been clarified so far as officers promoted on supernumerary post being granted the charge of SDO. The department further went to the extent of saying that in the event of an administrative exigency when a Sub Engineer can be given the charge of the Sub Division a Sub Engineer when promoted by creation of supernumerary post also

can be considered for being assigned the responsibilities of an Assistant Engineer and also if warranted can be appointed as a Sub Division Officer. This meets the argument of the petitioner who was primarily opposing the petition on the ground of respondent No.2 not being competent to replace the petitioner.

5. Another fact which needs to be appreciated is that as has been discussed the order of transfer is mainly challenged on the ground of competency of the officer who has been posted in place of the petitioner. It is not the claim of the petitioner that this transfer is in any manner bad in law. Moreover, the transfer of the petitioner cannot be tested on the ground of competency of the officers who is replacing the petitioner. An order of transfer can be tested independently so far as person who has been transferred. The petitioner would not be in any manner prejudiced by the posting of respondent No.2 in his place as SDO at Deobhog nor is it going to adversely affect the service condition of the petitioner or any of the service conditions of the petitioner in any manner.

6. Given the said facts and circumstances of the case, this court does not find any strong case made out by the petitioner calling for interference to the impugned order of transfer.

7. However, right of the petitioner stands reserved for availing appropriate remedies on the administrative side. In case if the petitioner is aggrieved by the order of transfer, he may prefer a representation to the authorities concerned and the authorities in turn may consider and decide the same on its own merits at the earliest preferably within a period of 45 days from the date the petitioner makes representation.”

7. On due consideration, we find that no case is made out for interference with the order of the learned Single Judge and therefore, finding no merit, the writ appeal is dismissed. No costs.

Sd/-

(Arup Kumar Goswami)
Chief Justice

Sd/-

(Goutam Bhaduri)
Judge

Anu