

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 379 of 2021**

Mahendra Jain S/o Shri Dilip Kumar Jain, Aged About 42 Years R/o Vardebhata, Kanker District Uttar Baster Kanker Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through Its Secretary, Revenue And Disaster Management, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. The Collector, District Uttar Bastar Kanker, Chhattisgarh.
3. The Additional Collector, District Uttar Baster Kanker, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

For Appellant : Mr. Parag Kotecha, Advocate.

For Respondents - State : Mr. Siddharth Dubey, Deputy 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

23.11.2021

Heard Mr. Parag Kotecha, learned counsel for the appellant. Also heard Mr. Siddharth Dubey, learned Deputy Government Advocate appearing for the respondents.

2. This appeal is presented against an order dated 06.10.2021 passed by the learned Single Judge in WPS No. 5407 of 2021. The challenge in the writ petition was to an order of transfer dated 16.09.2021, whereby, the appellant, who is a Patwari, was transferred from Arjuni, P.H No. 22 to

Pakhanjur Sub Division.

3. The learned Single Judge observed, as follows:

“3. All said and done, the plain reading of the impugned order clearly reflects that change of place of posting made by the Additional Collector, Uttar Bastar, Kanker. The distance between the two place of is not too far distance, which could cause great inconvenience to the petitioner. Accordingly, this Court is reluctant to entertain the writ petition at this juncture. However, in case if the petitioner is not satisfied with the present place of posting, the only recourse available to the petitioner is to make appropriate representation to the authorities concerned which according to the petitioner, he has already made and his representation is still pending consideration.

4. Given the said facts, respondent No.3 is directed to consider the representation of the petitioner on its own merits in accordance with the transfer policy and rules for change of place of posting is concerned at the earliest preferably within a period of six months.

5. While deciding the representation of the petitioner, the authorities are also expected to consider the same keeping in view the circular of the State Government dated 09.07.2021 in respect of shifting of the Patwaris from one place of another is concerned.

6. With the aforesaid observations, the present writ petition stands disposed of.”

4. Pursuant to the aforesaid order of the learned Single Judge, the appellant submitted a representation dated 11.10.2021, which came to be disposed of by an order dated 29.10.2021. The appellant has filed an application under Order 41 Rule 27 of the Code of Civil Procedure to bring on record the representation dated 11.10.2021 and the order dated 29.10.2021 passed by the Deputy Collector.

5. The aforesaid fact of submitting a representation by the appellant demonstrates that the appellant, at the first instance, had no grievance against the order dated 06.10.2021 of the learned Single Judge and had acted upon the same, and therefore, the order had attained finality. It is only when the representation came to be dismissed, recourse is taken to challenge the order dated 06.10.2021 by filing this appeal. It will be impermissible to allow the appellant to approbate and reprobate.

6. In view of the above, we find no merit in this appeal and accordingly, the same is dismissed. No cost.

7. However, before parting with the records, we observe that if the appellant is aggrieved by the order dated 29.10.2021, the appellant will be at liberty to assail the same in accordance with law, if so advised.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge