

(2022) 01 CHH CK 0059
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 250 Of 2022

Ashwani Kumar Mire

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Chhattisgarh Civil Services (Classification, Control And Appeal) Rules, 1966 — Rule 9

Citation : (2022) 01 CHH CK 0059

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : C.Jayant K. Rao, Amrito Das, Avinash Singh

Final Decision : Disposed Of

Judgement

1. The petitioner was earlier working as Teacher (L.B.) and he was placed under suspension by order dated 08/06/2020 under Rule 9 of Chhattisgarh

Civil Services (Classification, Control and Appeal) Rules, 1966. Thereafter, he preferred WPS No. 2967/2020 questioning the order of suspension

whereby he was allowed to make representation for revocation of suspension vide order dated 06/08/2020 passed by this Court. In pursuance thereof,

petitioner moved a representation and ultimately by order dated 21/09/2021 (Annexure P/1) passed by respondent No. 3, his suspension has been

revoked, but now he has been posted at Government Middle School, Kandabani, Block Pandariya, District Kabirdham and suspension allowance has

been confined for the purpose of pension against which this writ petition has been preferred by him.

2. Mr. C. Jayant K. Rao, learned counsel for the petitioner, would submit that while revoking the order of petitioner's suspension, his place of posting

could not have been changed and since no departmental action has been taken

against him, therefore, he is entitled to be posted at his earlier place of posting and further entitled for full backwages of the suspension period. He would further submit that petitioner may be allowed to make a representation so that he may be posted in District Bemetara where he was earlier working.

3. Mr. Amrito Das, learned Additional Advocate General, would invite the attention of this Court in the decision rendered by the Division Bench of this Court in the matter of L.P. Saket v. Chhattisgarh State Civil Supplies Corporation Limited WPS No. 7269/2017 decided on 15/11/2018 wherein it has

already been held that it is not a thumb rule that an employee whose suspension has been revoked has a right to be posted and continued in the same

place of posting on revocation of suspension, as he only has a lien on the post and not on the place of posting, therefore, the instant writ petition

deserves to be dismissed, however, if the representation is made by the petitioner, it will be considered and decided strictly in accordance with law.

4. I have heard learned counsel for the parties, considered their rival submissions made herein[^] above and went through the records with utmost circumspection.

5. The short question for consideration in this writ petition would be, whether the Divisional Joint Director (Education) is justified in transferring the petitioner to another District after revoking his suspension ?

6. In order to answer this plea, it would be appropriate to notice the judgment rendered by this Court in the matter of L.P. Saket (supra) wherein the Division Bench formulated the following question for consideration in paragraph 1 :[^]?

[^]1. Vide order date 27.03.2018, the learned Single Judge, while dealing with the present writ petition on the question whether an employee placed under suspension on charges of omission and commission for which a departmental proceeding was initiated and is still subsisting, has a right to be posted back to the same place of posting after revocation of suspension or he can be given another place of posting.[^]?

7. Thereafter, the aforesaid question has been answered by the Court in paragraphs 12 and 14 of the judgment, which states as under :[^]?

[^]12. Keeping in mind what the Full Bench of the Madhya Pradesh High Court has had to say in the case of Asif Mohd. Khan v. State of Madhya

Pradesh and Ors. 2015 (4) MPLJ 406 and even with regard to correctness or otherwise of the decision rendered in the case of Kendriya Vidyalaya

Sangathan & Others. V. Dr. R.K. Shastri & Another 2005 (4) MPHT 352, we are constrained to hold that the order passed by a coordinate Bench of

the Single Judge in the cases of Khadanand Patanwar v. State of Chhattisgarh & Others WPS No. 3146/2015 and Khelendra Kumar Singh v. State of

Chhattisgarh WPS No. 5039/2015 are not good laws. There is no right of an employee to claim a place of posting on revocation of suspension as a

matter of right and the competent authority can very well transfer an employee to yet another place after revocation of suspension even otherwise

keeping the exigencies of service into consideration as also that posting such a person on the same post and place where a departmental enquiry was

still going on against him, may not be in the interest of the administration since there could be every possibility of such an employee to tamper with the

evidence and not allow a free and fair enquiry to be held. We may also notice that during period of suspension, the Head Quarter of an employee is

always fixed away from the place of posting which has an object and reason. The same will be defeated if it is held that the employee has a lien on

place also.

14. The question of law for which the reference was made has been answered in the preceding paragraphs of this order. To sum, it cannot be a

thumb rule that an employee whose suspension has been revoked has a right to be posted and continued in the same place of posting on revocation of

suspension, as he only has a lien on the post and not on the place of posting.â??

8. Thus, it has clearly been held by the Division Bench of this Court that an employee whose suspension has been revoked has no legal right to be

posted and continued in the same place of posting on revocation of suspension, as he only has a lien on the post and not on the place of posting. The

competent authority has the jurisdiction to change the place of posting as per administrative exigency. In that view of the matter, petitioner's claim that

he ought to have been posted at his earlier place of posting after revocation of suspension cannot be accepted and is hereby rejected. However,

petitioner is at liberty to make representation before respondent No. 3 for redressal of his grievance/posting in District Bemetara within three weeks

from today which will be considered and decided within further three weeks from

the date of filing of the representation on its own merits in accordance with law.

9. With the aforesaid liberty reserved in favour of the petitioner, this writ petition stands disposed of. No cost(s).