

(2012) 02 CHH CK 0001

In the Chhattisgarh High Court

Case No : Writ Petitions No. 1025 of 2012, Writ Petitions No. 1026 of 2012 and Writ Petitions No. 1027 of 2012

Chitrانjan Das and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Constitution of India, 1950 — Article 166, 226, 309, 311, 311(1)

Citation : (2012) 02 CHH CK 0001

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon''ble Shri Satish K Agnihotri, J.—Since, W.P.(S) Nos. 1025, 1026, 1027, 737, 738, 763, 764, 767, 785, 797, 800, 802, 853, 870, 871, 895, 897, 898, 899, 900, 901, 902, 903, 904, 906, 926, 927, 929, 930 & 941 of 2012 involve the same facts and grounds, they are being considered and disposed of by this common order.

2. By these petitions, the petitioners seek to challenge the legality and validity of the order dated 31.01.2012 passed by the respondent authorities by which the petitioners working on the post of Revenue Inspector were transferred from one district to other district.

3. Learned counsel appearing for the respective petitioners jointly submit that while passing the impugned order dated 31.01.2012, the respondent authorities have not followed the memo dated 08.08.2011, wherein, it was provided that an employee can be transferred in emergent situation only in coordination of the Chief Secretary and on approval of the Chief Minister.

4. Learned counsel further submit that since no reasons have been assigned, it cannot be held that there was any administrative exigency to transfer the petitioners. Learned counsel also submit that as per the transfer policy dated

13.06.2011, the transfer of class-III and class-IV employees can be made within the district, on the recommendation made by the Collector after approval of the in-charge minister. The Revenue Inspectors are admittedly class III employees. Lastly, the petitioners contend that there could not be transfer of employees more than 10% of the total strength, whereas, in the case on hand, more than 10% Revenue Inspectors have been transferred. Therefore, the impugned order is bad in law and the same may be quashed.

5. On the other hand, learned counsel appearing for the State submits that the transfer policy is only guidelines, which has no binding and statutory effect. The guidelines were made by the State Government, so that the Collectors and other officials may not transfer the employees of the State arbitrarily and unreasonably. It is further submitted that in case of transfer, it is not necessary to assign reasons, as transfer is an incidence of service and it does not involve any punishment. It is for the State to post an employee at a place where it is administratively required. In support of his contention, learned State counsel placed reliance upon the decision of the Supreme Court in *Union of India & Others v. S.L. Abbas* and *State of U.P. & Others v. Gobardhan Lal*.

6. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

7. It is evident that in the transfer policy dated 13.06.2011, certain guidelines have been framed in respect of transfer of class-III and class-IV employees by the Collector within the district after approval of the in-charge minister. In the said policy it is also provided that there cannot be more than 10% of transfer of employees. Subsequently, the memo dated 08.08.2011, was issued by the State Government clarifying the transfer policy dated 13.06.2011, that during the ban period any transfer can be made in administrative exigency in coordination through the Chief Secretary on approval of the Chief Minister.

8. Contention of the learned counsel for the petitioners that the transfer policy is binding on all the authorities, is noticed to be rejected, as the Revenue Inspector is holding a civil post and thus under Article 311 of the Constitution of India, the State Government is the employer and, as such, regulate service conditions of its employees, in accordance with the service rules framed under Article 309 of the Constitution of India.

9. No statutory provision or rule has been produced or pointed out to indicate that under the service rules, there is any prohibition on the State Government to transfer an employee. Thus, the absolute power vest in the State Government to transfer an employee from one place to other place. The instructions and policies cannot in any manner curtail or prohibit or restrict the powers of the State Government in respect of transfer of its employees. Thus, the Court should not interfere in case of transfer unless the same is passed with mala fide intention, contrary to the statutory provisions and without jurisdiction of the authority passing the order.

10. On perusal of the impugned order, it is found that the same has been passed by the State Government in exercise of its power under Article 166 of the Constitution after obtaining approval of the Chief Minister. Thus, the order passed by the State Government cannot be faulted with on any ground.

11. In addition, learned counsel appearing for the petitioners submit that under the MP/CG Land Records Niyamavali, the Director, Land Records has been authorized for transfer of Revenue Inspectors from one district to another district under Rule 20. Thus, the State is not competent to pass the order.

12. The aforesaid contention of the petitioner is rejected on simple grounds that firstly, the petitioners are holding the civil post and in case of a person who is holding civil post, the State is the appropriate authority for passing the order, even if under Rules the power has been assigned to some other junior authority, or if the disciplinary authority or competent authority is junior officer, even then, the senior authority can always pass the order.

13. In *Sampuran Singh v. State of Punjab*, the Supreme Court observed as under :

11.. In view of Article 311(1) of the Constitution the removing authority cannot be subordinate in rank to the appointing authority. By necessary implication the removing authority may be higher in rank to the appointing authority.

14. The aforesaid law laid down by the Supreme Court in *Sampuran Singh (supra)* has been referred and reiterated in *Government of Andhra Pradesh & Another v. N. Ramanaiah*.

15. In the cases on hand, it is not the case of the petitioners that there was any mala fide exercise of power. Even there is no allegation on the part of the petitioners that the officer passing the order has no competence to pass the impugned order and/or the impugned order is violative of statutory rules and regulations.

16. Be that as it may, it is a trite law that transfer/posting is an incidence of service. The Court should not interfere with the transfer/posting order unless there is malice, infringement of statutory rules and regulations. In the case on hand, the petitioner has failed to establish any of the aforestated grounds. The employee may be posted anywhere at the instance of the employer in public interest and administrative exigency. Further, it is for the Government to post another person if any vacancy arises on account of transfer/posting of an employee. Thus, the impugned order warrants no interference. (See *E.P. Royappa v. State of Tamil Nadu and another*, *Shilpi Bose (Mrs.) and others v. State of Bihar & another*, *State of M.P. and another v. S.S. Kourv and others*, *Mohd. Masood Ahmad v. State of U.P. & Others* *Chief Commercial Manager, South Central Railway, Secunderabad & Others v. G. Ratnam & Others* and *Airports Authority of India v. Rajeev Ratan Pandey & Others*).

17. Applying the well-settled principles of law to the facts of the case on hand

and for the reasons mentioned hereinabove; there is no merit in these petitions.

18. In view of the above the petitions, being devoid of merits, are liable to be and are hereby dismissed.

19. At this juncture, learned counsel appearing for the petitioners submit that in some cases the name of the petitioner; posting place, etc. have not been properly mentioned. For this irregularity, the petitioner may file a separate representation to the concerned authority for necessary orders. If such a representation, to that extent, is filed, the authority concerned may consider and decide the same, in accordance with law and on its own merits, within a period of two weeks.

20. No order as to costs.