
(2019) 11 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition (s) No. 9176 Of 2019

Rajesh Kumar Suman

APPELLANT

Vs

State Of Chhattisgarh Through Secretary And Ors

RESPONDENT

Date of Decision : 11-11-2019

Acts Referred:

Citation : (2019) 11 CHH CK 0003

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Anshuman Shrivastava, Soumya Rai

Final Decision : Allowed

Judgement

1. Heard.

2. The grievance of the petitioner is that by order dated 12.07.2019 the petitioner was transferred from Government Primary School, Chitapali, Block - Baloda to Government Primary School, Bhanwar, Block - Baloda. Pursuant to such transfer order, the petitioner joined his place of transfer on 18.07.2019 vide Annexure P-3 and his salary was being drawn from the transferred place of posting. It is contended that thereby the transfer order was executed. Thereafter, the transfer of the petitioner has been canceled by order dated 17.10.2019 (Annexure P-1).

3. Learned counsel for the petitioner would submit that once the transfer order has been executed, the same can only be modified by another transfer order and the earlier transfer order cannot be canceled. He placed his reliance in the judgment passed by this Court in Kaushal Yadav Vs. State of Chhattisgarh & anr. (WPS No.3544 of 2017, decided on 30.10.2017) and Prakash Sahu Vs. State of Chhattisgarh & ors. (WPS No.7376 of 2019, decided on 17.09.2019).

4. This Court in the case of Kaushal Yadav Vs. State of Chhattisgarh & anr. (WPS No.3544 of 2017, decided on 30.10.2017) this Court has observed thus:-

3) This Court, in the identical matters i.e. Brajendra Singh v. State of Chhattisgarh & Others WPS No.5012 of 2009, decided on 09.03.2010 , Dr. Toshan Lal Todar v. State of Chhattisgarh & Others WPS No.855 of 2012, decided on 27.2.2012 and Khubchand Verma v. State of Chhattisgarh & Others WPS No.1054 of 2012, decided on 2.3.2012 observed that once the transfer order is executed, the same cannot be cancelled. It was further observed that the employer is always at liberty to pass an order of transfer and posting the employee keeping in view the administrative exigency and public interest.

4) The Division Bench of this Court in Tarun Kanungo v. State of Chhattisgarh & Others WA No.248 of 2015 (decided on 15.5.2015) , held thus :

"3. The question for cancellation of an order not in existence does not arise. The only option available to the authorities was to issue any fresh orders. We may appropriately refer to two Bench decisions in 2000 (2) PLJR 332 (Smt. Jyotsna Kumari v. The State of Bihar) and 2000 (3)PLJR 139 (Mahmood Azam Siddique v. The State of Bihar) observing as follows :

'12. Now it is a settled law that once an order of transfer issued and acted upon, it is spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant.'

5) In view of the above, the impugned order is quashed. However, liberty is reserved in favour of the respondents to pass fresh order depending upon the administrative exigency, in accordance with the transfer policy.

5. Since the case of the petitioner is covered by the ratio laid down by this Court. It is ordered accordingly. The observation made in the paras 3, 4 & 5 of the WPS No.3544 of 2017 shall also govern the case of the present petitioner. Accordingly, the transfer order dated 17.10.2019 (Annexure P-1) is quashed. However, the liberty is reserved in favour of the respondents to pass afresh order depending upon the administrative exigency, in accordance with the transfer policy.

6. Accordingly, the petition stands allowed to the extent indicated above.