
(2019) 12 CHH CK 0165

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 10108, 10156 Of 2019

Satya Prakash Tripathi And Ors

APPELLANT

Vs

State Of Chhattisgarh Through And Ors

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Citation : (2019) 12 CHH CK 0165

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Manoj Paranjpe, Alok Bakshi, Anup Majumdar, Akanksha Jain

Final Decision : Disposed Of

Judgement

1. Heard.

2. This is the second round of litigation. Earlier in the first round of litigation in WPS No.6794 of 2019 the challenge was made to the transfer order dated 13.08.2019 whereby the petitioner was transferred from the office of Chief Executive Officer, Janpad Panchayat, Sitapur, District Surguja to the Office of The Collector, Jashpur. This Court in WPS No.6794 of 2019 has passed the following order:-

"1. The challenge in the present Writ Petition is to the order (Annexure-P/) dated 13/08/2019 whereby the services of the petitioner has been transferred from office of Chief Executive Officer, Janpad Panchayat sitapur, District Surguja to office of collector Jashpur.

2. The contention of the petitioner is that the impugned order shows that the petitioner has been posted on deputation in the Janpad Panchayat which is incorrect rather the document enclosed along with writ petition would show that the petitioner substantially is posted in the Janpad Panchayat on being promoted to the post of Assistant Grade - 2.

3. The second ground of the petitioner is that the post on which the petitioner is

working is a district cadre post and the gradation list is prepared district wise, however contrary to the same, he is being sent to a different district where the seniority, promotional avenues etc would also be adversely affected.

4. Given the aforesaid facts, let the Petitioner make a detailed representation to the respondents in this regard within a period of 10 days from the date of receipt of copy of this order and respondents in turn shall take a decision within further period of 45 days from the date of receipt of representation of the petitioner.

5. The respondent authorities are expected to decide the objections by a speaking order.

6. Till the representation is decided, there shall be a stay of the effect and operation of order so far as the petitioner is concerned.

7. The writ petition accordingly stands disposed off."

3. Learned counsel for the petitioner would submit that pursuant to the order passed in WPS No.6794 of 2019 the petitioner had filed the representation vide Annexure P-11, wherein the entire grievance was projected and slated that if the transfer of the petitioner is made out of the district Surguja it would hamper his seniority as the post wherein the petitioner was appointed is a district cadre post, however, while deciding the same nothing has been discussed, no reasons have been attributed and the same is rejected without assigning any reason, therefore, it is submitted that the rejection order of representation Annexure P-1 may be set aside.

4. Per contra, learned State counsel opposes the arguments advanced by learned counsel for the petitioner and would submit that the representation of the petitioner was considered as a whole and after due application of mind, the same has been decided and the order rejecting the representation is well merited which do not call for any interference.

5. Perusal of the earlier order passed by this Court would show that the categorical submission was made that by transfer from one district to another district the seniority of the petitioner would be affected. Consequent upon it this Court passed the order to make a representation within specified period of time the same was being made vide Annexure P-11. Perusal of Annexure P-11 would show that the grounds urged by the petitioner in the representation that with the transfer of the petitioner to the other district his seniority would be affected. Apart from that the grounds were also taken that the wrong description of the posting of the petitioner was made in the transfer order, however, while deciding the representation only on the simple ground that the transfer has been made on the administrative ground, the representation has been dismissed. When there is a specific order passed by this Court then it has to be taken in its true spirit. The representation when contains the fact that the seniority of the petitioner would be affected coupled with other grounds and when it is supported by the order of this Court, the same cannot be shelved.

6. The Supreme Court in the case of Secretary and Curator, Victoria Memorial Hall Versus Howrah Ganatantrik Nagrik Samity and others {(2010) 3 SCC 732} has held thus in para 41 & 42 which are reproduced herein below:-

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of U P (2008) 3 SCC 172; SAIL Vs. STO (2008) 9 SCC 407; State of Uttaranchal Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana (2009) 3 SCC 258; Mohd Yusuf Vs. Faij Mohammad (2009) 3 SCC 513; and State of H P Vs. Sada Ram (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as to why his application has been rejected.

7. Therefore, when the order rejecting the representation is translated into the principles as has been laid down by the Supreme Court as also coupled with the fact that the order of the High Court, it does not satisfy the requirement. In a result, the order dated 30.10.2019 is set aside. The matter is remitted back to the concerned authority who has rejected the representation. It is expected that a reasoned order would be passed with respect to the grounds raised in the representation. The said exercise shall be completed within a period of 45 days from the date of receipt of this order. Till the representation is decided, the transfer order in respect of the petitioner shall not be given effect to.

8. With the aforesaid observation, the writ petition stands disposed of.