

(2019) 02 CHH CK 0080

Chhattisgarh High Court

Case No: Writ Petition (S) No. 809 Of 2019

Harish Chandra Verma

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Feb. 7, 2019

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Rajeev Shrivastava, Jitendra Pali

Final Decision: Disposed Of

Judgement

P. Sam Koshy, J

1. The challenge in the present writ petition is to the order Annexure P- 1 dated 29.01.2019 whereby the petitioner has been ordered to be relieved

from the office at Bilaspur and has been sent to Sub-division Khairagarh where the petitioner was working prior to July, 2012.

2. Brief facts of the case are that, the petitioner was substantively working as an Assistant Engineer under the respondents. He was working at Sub-division Khairagarh prior to 10.07.2012. Vide order dated 10.07.2012, the petitioner along with other persons stood transferred to Sub-division No.1,

Bilaspur. The petitioner immediately joined the transferred place at Bilaspur on 12.07.2012. It is said that the Department vide order dated 11.07.2012

modified the order dated 10.07.2012 and the place of posting of the petitioner stood modified and the petitioner was ordered to be posted from Sub

Division Khairagarh to Khairagarh Division. The said order dated 11.07.2012 was not implemented or acted upon by the Department any further till

the present impugned order was passed.

3. The contention of counsel for petitioner is that the impugned order Annexure P-1 dated 29.01.2019 has been passed only to ensure that the petitioner is shifted from Sub-division 1, Bilaspur where at the behest of the petitioner certain irregularities were detected on the part of respondent no.5 Contractor in connection with the construction of 2 bridges.

4. At this juncture, counsel for the State, tried to defend the order submitting that in fact an error crept in the original order dated 10.07.2012 wherein the name of the petitioner appeared at two places. At the first instance, the petitioner was shown to be transferred to Bilaspur whereas in the second place, the petitioner was shown to be transferred from Sub- division to Division Khairagarh. According to the State counsel, this reflecting of the name of the petitioner at two places in the order dated 10.07.2012 was taken note by the Department and the modified order was passed on 11.07.2012 but for some reason, the said order could not be implemented. Since it was an order passed officially as early as on 11.07.2012, the said order had to be implemented which led to the issuance of the present impugned order.

5. From the record it reflects that the petitioner, by virtue of the order of transfer dated 10.07.2012, had got relieved from Khairagarh and given his joining at Bilaspur. The petitioner after having joined at Bilaspur continued to discharge his duties till the impugned order was passed. The gap in between is of a period of about 7 years. 7 years time is a considerable period for the State to act upon an order that was passed as early as in July, 2012. The respondents themselves, knowing fully well that the petitioner has assumed his duties at Bilaspur and is discharging his duties there did not take steps for implementing the modified order dated 11.07.2012. For all practical purposes it has to be presumed that the respondent State did not want the modified order dated 11.07.2012 to be acted upon. The respondents by their conduct have acquiesced of their right to seek any further implementation of the order dated 11.07.2012.

6. What cannot be lost sight is that if there is an administrative exigency as of now requiring the petitioner to be transferred from Bilaspur to Khairagarh, nothing prevents the respondents from passing a fresh order of transfer. In stead of resorting to a fresh order, the respondents, for some

reasons best known to them, tried to use an order which was passed 7 years back which by efflux of time has lost its efficacy.

7. Given the facts, this Court is of the opinion that the impugned order Annexure P-1 dated 29.01.2019 is bad in law, unjustified and uncalled for and

therefore the same deserves to be and is accordingly set aside/quashed, reserving the right of the respondents to pass a fresh order if they deem fit so

in accordance with the rules and the policy governing the field.

8. The writ petition stands allowed and disposed of.