
(2018) 07 CHH CK 0229

Chhattisgarh High Court

Case No: Writ Petition (S) No. 4209 Of 2018

R.S. Rathor

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: July 19, 2018

Hon'ble Judges: Sharad Kumar Gupta, J

Bench: Single Bench

Advocate: Manoj Paranjpe, R.K. Gupta

Final Decision: Dismissed

Judgement

Sharad Kumar Gupta, J

1. By this order, I.A. No. 1 is being disposed of.

2. In the instant writ petition, the petitioner has prayed for quashing of the impugned order Annexure P-1 dated 22-5-2018 whereby and whereunder

he has been transferred from the Sub Divisional Officer, Rural Engineering Service, Sub Division, Masturi, Distt. Bilaspur to Sub Divisional Officer,

Rural Engineering, Sub Division, Kawardha, Distt. Kabeerdham on administrative exigencies.

3. Mr. Manoj Paranjpe, Counsel for the petitioner argued that earlier the petitioner was transferred from Masturi to the office of Superintending

Engineer, Rural Engineering, Bilaspur by order of Collector Bilaspur. In WPS No. 1986/2018 preferred by the petitioner, the coordinate Single Bench

of this Court passed an order on 5-3-2018 that the effect and operation of the Collector's order is stayed till the next date of hearing. Without obtaining

the permission from the High Court, the impugned order has been passed during ban period and without coordination. No notice had been given to the

petitioner before passing the impugned order. At the instance of the Collector, the impugned order has been passed. He is victim of frequent transfer.

Thus, the impugned order Annexure P-1 may be stayed. He placed reliance on a decision of Hon'ble Supreme Court in *Somesh Tiwari -v- Union of India and ors.* [(2009) 2 SCC 592], in which it has been held that :-

An order of transfer is an administrative order. Transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fides on the part of the authority is proved. Mala fides are of two kinds- first, malice in fact and second, malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane to passing of an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in an anonymous complaint. It is one thing to say that the employer is entitled to pass any order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of, or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. No vigilance enquiry was initiated against the appellant. Transfer order was passed on material which was non-existent. The order suffers not only from non-application of mind but also suffers from malice in law.

4. Mr. R.K. Gupta, Counsel for the respondents No. 1, 2 and 5 argued that after the aforesaid stay order, a fresh order has been passed. Thus, there is no necessity to obtain permission from the High Court. The impugned order has been passed in coordination and with the approval of the Chief Minister. Serious complaints were made against the petitioner. The Samanya Sabha Samiti, Janpad Panchayat, Masturi has also passed resolution for transfer of the petitioner in the interest of administration and general public. Hence, I.A. No. 1 may be rejected.

5. Respondent No. 1 has passed a fresh transfer order which is impugned in this writ petition, thus, prima facie it does not appear that the respondent No. 1 was under obligation to obtain permission before issuing the impugned order. In the impugned order Annexure P-1 it has been mentioned that the approval of the Chief Minister has been obtained in coordination. From Annexure P-4 and Annexure R-1, prima facie it appears that there was

some dispute between the petitioner and the Sarpanch of Janpad Panchayat, Masturi regarding verification of the construction work. The general body of Janpad Panchayat, Masturi has passed the resolution on 15-12-2017 that the petitioner may be transferred.

6. In the case of Somesh Tiwari (supra) the matter was disposed of finally on the basis of the merit of the case.

7. In the case in hand, prima facie it does not appear that the impugned order is passed on an irrelevant ground and it is passed by way of, or in lieu of punishment.

8. In the case is hand, prima facie it does not appear that the impugned order violates any statutory rules or regulations or it has been passed by the authority without jurisdiction or issued with malafide intention. Prima facie it does not cause any prejudice, problem, hardship to the petitioner and it could not be termed as illegal.

9. Looking to the above mentioned facts and circumstances of the case, this Court finds that prima facie at this stage the petitioner does not get any help from the aforesaid judicial precedent laid down in Somesh Tiwari (supra).

10. Looking to the above mentioned facts and circumstances of the case, I.A. No. 1 is rejected.

11. List the matter after service report of R-3 and 4 is received.