

(2018) 02 CHH CK 0270

Chhattisgarh High Court

Case No: Writ Petition (S) No. 1272 Of 2018

P.D. Sonekar

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Feb. 16, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Animesh Verma, S.P. Kale

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The present writ petition under Article 227 of Constitution of India has been filed assailing the order dated 10.01.2018. Vide the impugned order the

respondents have rejected a representation which the petitioner had preferred against an order of transfer dated 14.08.2017 transferring the petitioner from Govt. Digvijay College, Rajnandgaon to Govt. Revti Raman College, Surajpur.

2. The present is the second round of litigation. When initially the order of transfer was passed on 14.08.2017. The petitioner had preferred a writ

petition challenging the same which was registered as WPS No. 4127/2017. After considering the contentions put forth on either side and on perusal

of record, this Court had disposed of the writ petition with a direction to the Respondent No.1 i.e. the Secretary, Department of Higher Education to

decide the representation of the petitioner which he had filed keeping in view the grounds raised by the petitioner in his representation.

3. While disposing of the writ petition, this Court had also granted an interim protection to the petitioner from being relieved directing the respondents to maintain status-quo till the disposal of the representation. Now vide the impugned order dated 10.01.2018 (Annex.P/1), the respondents have rejected the representation of the petitioner.

4. The contention of the petitioner while assailing the impugned two orders i.e. the order of transfer and order of rejection of the representation is that the petitioner though substantially holding the post of an Assistant Professor (History) at the college at Rajnandgaon was also discharging the duties of the NCC officer in the said college. According to the petitioner, he has undergone extensive training under the NCC and there are guidelines and instructions of the State Government which specifically envisages that an officer of the NCC trained in this regard should, if required to be transferred should be transferred to a college which has NCC wing. According to the petitioner, in the instant case the College where the petitioner has been transferred vide the impugned order dated 14.08.2017 does not have a NCC wing and therefore the petitioner should not have been transferred to Surajpur.

5. According to the petitioner, he may be transferred anywhere else, wherever there is a NCC wing, but may not be transferred to a College which does not have a NCC wing. It was further contended by the petitioner that since the petitioner as an NCC officer was holding the rank of a Captain and if he stands transferred to a College which does not have a NCC wing, the petitioner's seniority would be affected, so far as his next promotion is concerned. The petitioner relied upon the National Cadet Corps Rules, 1948 to substantiate his contention, so far as his losing the seniority is concerned. It was also the contention of the petitioner that the respondents have passed the impugned order (Annex.P/1) i.e. rejection of the representation in an arbitrary and malafide manner. According to the petitioner, this Court while disposing of the earlier writ petition i.e. WPS No. 4127/2017 had given specific directions for the authorities to consider while deciding the representation, but the authorities concerned have not appropriately appreciated the contents of the representation and have decided the representation in a superfluous manner without considering the

merits of the case in any manner. It was also the contention that the wife of the petitioner is also a Govt. Teacher and posted at Rajnandgaon, therefore under the transfer policy of the State Government also the husband and wife should be retained at the same place and on this ground also the petitioner's transfer order deserves to be quashed.

6. Lastly, it was contended by the petitioner that the State Administrative Tribunal as well as this High Court in the past have stayed similarly transfer orders only on the ground of the employee being transferred to a College where there is no NCC wing.

7. Per contra, the State counsel opposing the petition submits that the petitioner in the instant case is not entitled for any relief as there is no merit in his submission. The State counsel submits that it is a case where the petitioner in the past himself had submitted a couple of resignation letters showing his disinterest in continuing with the charge as a NCC Officer. Moreover, the counsel for the State submits that only because the petitioner happens to be the NCC Officer would by itself not give any immunity from transfer being made by the appointing authority under administrative exigencies.

8. Mr. S.P. Kale, Dy. A.G. appearing for the State submits that the Rules of 1948 which has been relied upon by the petitioner would not be applicable so far as the petitioner's service condition are concerned. It was further contended by the State counsel that the case of the petitioner was that after the disposal of earlier writ petition on 28.08.2017 placed before a committee consisting of three senior level officers i.e. the Additional Chief Secretary, Higher Education Department, the Principal Secretary, Forest Department and the Secretary, General Administration Department and they had thoroughly scrutinized the representation of the petitioner and found that it does not have any merits and have rejected the same vide order dated

10/01/2018 and which vide the impugned order (Annex.P/1) has been communicated to the petitioner. Thus, there is no scope of further interference.

9. Having heard the contentions put forth on either side what culs out from the argument is the two prominent questions which has been raised or which requires adjudication.

(1) Whether in the backdrop of the NCC rules 1948, the petitioner has an immunity from being transferred to a college which does not have an NCC

wing?

(2) Whether the petitioner could be transferred without the consent, knowledge and approval of the directorate NCC State cell?

10. Now in order to address the aforesaid two issues what really needs to be understood is the substantial post which the petitioner holds.

Undoubtedly, the petitioner is working as an Assistant Professor (History) at the Government Digvijay College, Rajnandgaon. His substantial

appointment itself was under the Government of Chhattisgarh. His initial appointment itself was unconnected or without any sort of intervention or

connection with the Directorate of NCC State cell nor was the recruitment of the petitioner under any of the provision of NCC rules 1948.

11. So far as the service condition pertaining to the petitioner is concerned so also the emoluments which the petitioner is substantially drawing are as

per the service condition framed by the State Government which is applicable to the cadre of Assistant Professor under the State Government. That

under the said service condition, transfer is an incident to service. The petitioner is duty bound to discharge his services wherever he is posted by the

State Government. So far as the post of NCC officer which the petitioner is holding, that was only an additional charge which the petitioner was

assigned and even while assigning the said charge, the emoluments which the petitioner was paid for discharging the duties of incharge NCC officer, it

was not a sort of regular salary which he is otherwise entitled or which is given to officer of the NCC, but is only paid as an honorarium that too a

nominal amount.

12. Now if we look at the NCC rules 1948, the same does not anywhere contain a clause wherein it gives an immunity to the teacher who has been

made incharge of the NCC wing from being transferred from the college.

13. Another feature which is reflected from the rules of 1948 is that, rule 22 provides the period of appointment and which reflects that the officer

appointed under the rules shall hold office as an officer for a period of 15 years or until he reaches 45 years of age whichever is earlier. The proviso

clause further show that, even if he gets an extension, it can only be to the maximum period of 50 years of age.

14. In the instant case as per petitioner himself, he is around 57 years of age. As such he has crossed the permissible age limit under the rules which by itself impliedly establishes the fact that, the said rules did not govern the service condition of the petitioner in any manner and therefore the petitioner would not have an advantage of any of the provision of the said rules.

15. So far as the guidelines and circulars of the State Government is concerned, these are mere guidelines and are not mandatory provisions or statutory rules which has a mandatory force.

16. From perusal of proceedings what clearly reflect is that, the petitioner has been at the present place of posting for quite sometime and that except for the ground of immunity claim in the capacity of an NCC officer, the petitioner has not been able to establish any substantial violation of any of the condition to the transfer policy of the State Government, neither is it a case that the transfer order issued by the officer incompetent or is in violation of any of the statutory service condition governing the petitioner's employment.

17. So far as the ground of seniority getting adversely affected or the petitioner would be loosing substantial emoluments each month, the same also would not be ground sustainable for the simple reason that, this Court has earlier itself in the preceding paragraph held that rules of 1948 did not apply so far as the petitioner's service conditions are concerned. Merely because he happens to have received certain emoluments in the process of discharging the duty of incharge NCC officer by itself would not give substantive right towards the emoluments and the same is payable to a person as long as he discharges his duty. The pay-scale of Assistant Professor which the petitioner was drawing prior to the order of transfer shall not be adversely affected in any manner, neither would seniority of the petitioner in the cadre of the Assistant Professor get adversely affected if he joined the transferred place. It may also be a case where at a later stage, the Government itself may think of posting the petitioner to a college which does have an NCC wing where considering his experience in the past, he could be made the incharge NCC officer. But these are all exclusive powers in the domain of the State authorities and it is the prerogative of Government in deciding the place of posting of the employees/Assistant professor

working under them including the power of transferring. The only remedy available to the petitioner was that which was provided to the petitioner by this Court on an earlier round of litigation in WPS No.4127/2017 which was disposed off on 28/08/2017 with liberty to make a representation to the State authorities who in turn shall consider the same.

18. In the light of the directions given by this Court on 28/08/2017 in WPS No.4127/2017, if the State authorities have substantively placed the case of the petitioner before the high power committee consisting of three senior most officers of the State Government of the rank of Additional Chief Secretary, Principle Secretary and the Secretary of three different department and if they have considered the case of the petitioner and found that the order of transfer of the petitioner not being in any manner malafied or contrary to the service condition, the scope of judicial review of this Court under Article 226 gets eliminated.

19. The law so far as transfer is concerned under the service jurisprudence, it is by now in a series of decisions in the past one decade has been laid to rest wherein it is repeatedly held by the Hon'ble Supreme Court so also by every High Courts that transfer is an incident to service and unless the employee is able to show the order of transfer to have been issued with malafied or has been issued by an officer incompetent or the order of transfer has been in total contravention to the condition of appointment or the recruitment rules governing the service condition, the Courts would not interfere with the order of transfer.

20. Given the aforesaid facts and circumstances of the case, this Court does not find any substantive material produced by the petitioner calling for an interference with the impugned order of transfer.

21. The writ petition thus being devoid of merits deserves to be and is accordingly rejected.