

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

WRIT PETITION NO. 532 OF 2005

PETITIONER

Kalinder Kumbhkar, S/o Late
Boglo Kumbhkar, aged about
37 years, Occupation -Service
posted as Assistant Teacher,
Primary School, Tatidand, P.O.
Somarkachar, Tahsil Bagicha
Distt. Jashpur (Chhattisgarh)

P.R. No. 5300/05

Presented by Shri Rakesh Dubey

dated 20/10/05

VERSUS

RESPONDENTS

1. State of Chhattisgarh through
Secretary, Department of
Tribal Welfare, Mantralaya,
Dau Kalyan Singh Bhawan,
Raipur (Chhattisgarh)
2. Assistant Commissioner,
Tribal Welfare, Distt. Jashpur
(Chhattisgarh)
3. Block Education Officer,
Block Kansabel, District
Jashpur (Chhattisgarh)

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WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN
NATURE OF CERTIORARI, MANDAMUS, PROHIBITION
AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR
DIRECTIONS, ORDER OR ORDERS:

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक

WP 5320/05

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<p><u>28/10/2005</u></p> <p>Shri Amrito Das, learned counsel for the petitioner.</p> <p>Shri Akhil Agrawal, Panel Lawyer for the State/respondents.</p> <p>Heard.</p> <p>The petitioner, who is presently working on the post of Assistant Teacher and has been transferred from Primary School, Tatidand, Block-Kansabel to Primary School, Gaibuda, Block-Bagicha vide order dated 31/8/2005 has challenged the validity of the aforesaid order.</p> <p>Learned counsel for the petitioner submits that three children of the petitioner are studying in the Local Institution and the transfer is a mid-session transfer and if the same is effected, the studies of the children would be effected.</p> <p>The law in relation to interference by the Courts in the matter of transfer is now well settled. The Apex Court while dealing with the matter of <u>Kendrikya Vidyalaya Sangathan -Vs- Damodar Prasad Pandey, 2004 AIR SCW 5563</u> observed that the transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by <i>mala-fide</i> or infraction of any prescribed norms of principles governing the transfer. (please see <u>Ambani Kanta Ray -Vs- State of Orissa - 1995 (Suppl.) 4 SCC 169</u>).</p> <p>Unless the order of transfer is vitiated by <i>mala fide</i> or is made in</p>	

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आदेश पत्रक (पूर्वानुबद्ध)

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	<p>violation of operative guidelines, the Court cannot interfere with it. (<u>See Union of India -Vs- S.L. Abbas AIR 1993 SC 2444</u>). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In <u>Union of India & others -Vs- Janardan Debanath & another (2004) 4 SCC 245</u>, it was observed as follows:</p> <p style="text-align: center;"><i>"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala-fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employee/management, as against such order passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in <u>National Hydroelectric Power Corpn. Ltd. -Vs- Shri Bhagwan (2001) 3 SCC 574.</u></i></p>	

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	<p>In the fact and circumstances of this case, since the learned counsel for the petitioner could not point out any ground of <i>malafide</i> on the part of the State or the authority or a ground which may show that the impugned transfer has been effected violating any statutory rules, I am not inclined to interfere in such order of transfer.</p> <p>The petition has no merit and the same is dismissed.</p> <p>However, in the fact and circumstances of this case, the petitioner would be at liberty to file a representation before the concerned authority raising his grievance about the studies of his children.</p> <p>C.C. as per rules.</p>	<p>Sd/- Sunil Kumar Sinha Judge</p>

24/10/05
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