

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S).No. 4062 of 2019

Jharkhand Rajya +2 awam Madhyamik Shikshetar Karmchari

Sangh, District Branch Giridih, through its Vice President

Shri Vikash Kumar Singh. **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Secretary, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
3. The Director, Secondary Education, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
4. The District Education Officer, Giridih.
5. Mamta Devi
6. Mahendra Kumar Mandal

(Respondent Nos. 5 and 6 are impleaded by the order of the Court)

.... **Respondents**

with
W.P.(S).No. 4236 of 2019

1. Samir Francis Kujur
2. Suresh Oraon
3. Ajay Kishornath Pandey
4. Soma Bhagat
5. Surendra Oraon
6. Amar Oraon
7. Atul Prabhat Tingga.

.... **Petitioners**

-Versus-

1. The State of Jharkhand
2. The Secretary, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
3. The Director, Secondary Education, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
4. The District Education Officer, Gumla.

.... **Respondents**

with
W.P.(S).No. 4023 of 2019

Jharkhand Rajya Shikha Arajpatrit Karmchari Sangh
 District Branch Bokaro through its Secretary, Abdul
 Rab Ansari.

...Petitioner

-Versus-

1. The State of Jharkhand
2. The Secretary, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
3. The Director, Secondary Education, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
4. The District Education Officer, Bokaro.

.... **...Respondents**

with
W.P.(S).No. 3909 of 2019

Jharkhand Madhyamik Shikshetar Karmchari Sangh
 through its Secretary Sri Binay Kumar Choudhary.

.... **...Petitioner**

-Versus-

1. The State of Jharkhand
2. The Secretary, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
3. The Director, Secondary Education, Department of School Education & Literacy, Govt. of Jharkhand, Ranchi.
4. The District Education Officer, East Singhbhum at Jamshedpur.

.... **...Respondents**

CORAM: THE HON'BLE MR. JUSTICE DR. S.N.PATHAK

For the Petitioner : Mr. Rishikesh Giri, Advocate
 Mrs. Ritu Kumar, Advocate
 Mr. Ashish Kr. Shekhar, Advocate

For the Respondents: Mr. Mohan Dubey, AC to SC-IV
 Mr. Sahil, AC to GA-III
 Ms. Bharti Kumar, AC to SC-III
 Ms. Shrestha Mehta, AC to Sr. SC-I

Order No. 04**Order dt. 29.08.2019****I.A. No. 8145 of 2019 [in W.P.(S).No. 4062 of 2019]**

Instant interlocutory application has been preferred by interveners namely, Mamta Devi and Mahendra Kumar Mandal, for impleading them as party-respondents in the instant writ petition and also for bringing on record certain relevant facts before the Hon'ble Court for just and proper adjudication of the present case.

Learned counsel for the petitioners and learned counsel for the respondents have no objection to the said prayer.

In view of submissions of the parties, let Mamta Devi and Mahendra Kumar Mandal be impleaded as party-respondents in course of the day.

I.A. No. 8145 of 2019 stands allowed.

**W.P.(S).No. 4062 of 2019 with W.P.(S).No. 4236 of 2019 with
W.P.(S).No. 4023 of 2019 with W.P.(S).No. 3909 of 2019**

Heard the parties.

2. Since the identical issues are involved in all these writ petitions, they are being heard together and are being disposed of by this common judgment.
3. Petitioners have approached this Court with a common prayer for quashing the letter dated 17.07.2019, by which direction has been issued by respondent No. 3 to respondent No. 4 to transfer all clerks who are posted or deputed for 3 years in a government high school and +2 schools and the same shall be reported to him by 22.07.2019.

Further in W.P.(S).No. 4062 of 2019 prayer has been made for quashing letter Nos. 2497 and 2498 dated 26.07.2019, by which the respondent No. 4 has issued the order directing all the transferred clerks to join the new place of posting latest by 12.08.2019.

Similarly, in W.P.(S). No. 4236 of 2019, prayer has also been made for quashing the office order contained in memo No. 1686 dated 22.07.2019, by which in compliance of the order dated 17.07.2019, the District Education Officer, Gumla had transferred 48 clerks of Gumla Districts.

Petitioner in W.P.(S). No. 4023 of 2019 has further prayed for quashing the letter dated 30.07.2019, by which respondent No. 4 has issued the order directing all the transferred clerks to join the new place of posting latest by 10.08.2019.

And petitioner in W.P.(S). 3909 of 2019 has further prayed for quashing the letter dated 25.07.2019.

4. The facts of the case in short is that petitioners in **W.P.(S).Nos. 4062 of 2019; 4023 of 2019; and 3909 of 2019**, are registered Societies which works and functions under the different names as mentioned above within the State of Jharkhand. The members of the Sangh are non-teaching staff of government high schools of the districts of Jamshedpur, Bokaro and Giridih. Similarly, in W.P.(S). No. 4236 of 2019 petitioners are non-teaching staff working in different government schools of Gumla district. It is the case of the petitioners that vide letter dated 17.07.2019, issued by respondent No. 3 a direction was given to respondent No. 4 to transfer all the clerks of the government high school, who are posted/ deputed for three years in a government school and report him that the same has been done prior to 22.07.2019. Subsequently, another letter was issued by the Director on 18.07.2019 adding some condition(s) regarding consideration to be made before transferring the clerks. It is the specific case of the petitioners that as per Jharkhand Government High School Teaching and Non-Teaching Staff Appointment and Service Condition Rule, 2015, it is the District Level Competent Committee, who is vested with the power to take decision of transfer of clerks but in the present case, the mass transfer is being done on the dictate of a whimsical order passed by the Director, Secondary Education. It is the further case of the petitioner that as per 2015 Rules, the transfer was to be done in the month of June but the same was not followed. Thereafter, in compliance of letter dated 17.07.2019 and 18.07.2019, the respondent No. 4 in all the writ petitions vide different orders which are impugned herein, directed all the Head Masters/ Incharge Head Masters to relieve the transferred clerks and the transferee are directed to join their place of transfer at the earliest.

Being aggrieved by such transfer orders, the petitioners have represented before the respective respondents clearly mentioning that there is no provision of transfer of non-teaching staff within three years of posting but the respondents have not paid any heed to the same. Challenging the said inaction and the order of transfer, the petitioner has preferred the instant writ application.

5. Mr. Risikesh Giri and Mrs. Ritu Kumar, learned counsels appearing for the petitioners throwing challenge to the impugned order of transfer argues that the executive order cannot supersede the relevant rules and the transfer order has been passed in complete violation of the relevant rules. The action of the respondents amounts to colorable exercise of power. Learned counsel further

argued that the impugned order is without jurisdiction and it is in complete violation of the statutory provisions as envisaged in the 2015 Rules. Learned counsel further argues that as per Jharkhand Government High School Teaching and Non-Teaching Staff Appointment and Service Condition Rule, 2015, it is the District Level Competent Committee, who is vested with the power to take decision of transfer of clerks but the impugned orders have been passed on the dictate of a whimsical order passed by the Director, Secondary Education and as such the same are liable to be quashed and set aside.

6. Per contra, counter-affidavit has been filed. Learned counsel appearing the respondents submits that the petitioner-Sangh has got no locus to file the present writ petition inasmuch as from perusal of the records it appears that petitioner-Sangh are not registered rather they are only affiliated to Jharkhand Arajpatrit Karmchari Maha Sangh, Hinoo, Ranchi which has not filed the instant writ petition. Learned counsel further argues that the transfer is an incident of service which shall usually not be interfered with unless there is an apparent malafide or bias on part of employer. Learned counsel for the respondents appearing in W.P.S No. 4062 of 2019, drawing the attention of the Court towards Counter-Affidavit filed by the respondent-State, argues that as per 2015 Rules, three members Committee was constituted for the purpose of transfer of non-teaching staff and the said Committee in its meeting dated 20.07.2019, discussed the names of 55 non-teaching staff for transfer. Subsequently, the said committee again held its meeting on 25.07.2019, wherein it was decided to transfer 26 non-teaching staff and accordingly, the transfer order of 26 non-teaching staff was issued vide office order contained in memo No. 1186 dated 30.07.2019. It is evident from the fact mentioned that transfer of non-teaching staff has been done in accordance with law by the competent authority. Learned counsel further argues that out of 26 transferred staff, 24 have already joined their transferred place and have started discharging their duties.

Learned counsel for the respondent-State appearing in W.P.(S). No. 3909 of 2019 draws the attention of the Court towards the counter-affidavit and submits that pursuant to the directions issued by the Director, Secondary Education, a list of clerks who had been posted in their respective schools for more than last three years and have more than atleast one year of service was prepared and also uploaded on the district website along with list of available vacant posts so that those employees, who were entitled to exercise their option of transfer could do so. In compliance thereof a total number of 67 clerks have

already exercised their option and have therefore been directed to join their new chosen posting as per the decision of the Establishment Committee and Office Orders bearing memo dated 31.07.2019 to that effect was issued.

Learned counsel accordingly submits that in view of the aforesaid facts, the writ petitions are devoid of any merit and same is liable to be dismissed by this Hon'ble Court. Learned counsel further argues that in Bokaro district all the transferred employees have already joined their new place of posting, whereas, in Gumla district most of them have already joined.

7. Mr. Abhijeet Kumar Singh, learned counsel appearing for the interveners/ respondents, argues that many of the non-teaching staff have submitted their representations for transfer and upon considering the same, the transfer order has been passed. Learned counsel further draws attention of the Court towards the transfer rules framed by State Govt. and submits that the transfer is as per rule and in consonance with the government policy and was done under the administrative exigencies.

8. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered opinion that no case is made out for interference. It is a settled proposition of law that employee has no legal right to be posted forever at a particular place or a place of his own choice. Since transfer is an incidence of service and as per the service conditions, in public interest and for efficiency in public administration, employees are to be posted from one place to another place.

The Hon'ble Apex Court in the in the case of *Union of India v. Janardhan Debanath, reported in (2004) 4 SCC 245*, has held as under:

*“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 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 a 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 employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by the Hon'ble Supreme Court in *National Hydroelectric Power Corpn. Ltd v. Shri Bhagwan, reported in (2001) 8 SCC 574.*”*

While dealing with similar case in **“Kendriya Vidyalaya Sangathan vs. Damador Prasad Pandey and others, reported in (2004) 12 SCC 299**, the Hon’ble Court held in para-4 as under:

“ 4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines the court cannot interfere with it. Who should be transferred and posted where is a matter for administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules, the courts should not ordinarily interfere with it.”

Further, in case of **State of U.P. v. Gobardhan Lal, reported in (2004) 11 SCC 402**, the Hon’ble Apex Court has held as under:

7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the

reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

9. In the instant cases, the order of transfer has been passed on administrative exigencies and following the provision enshrined in 2015 Rules. From perusal of the counter-affidavit filed by the respondent-State in **W.P.(S) No. 4062 of 2019**, it appears that as per the rules, three members Committee was constituted for the purpose of transfer of non-teaching staff and the said Committee held its meeting on 20.07.2019, where names of 55 non-teaching staff were discussed. Subsequently, the said committee again held its meeting on 25.07.2019, wherein it was decided to transfer 26 non-teaching staff and accordingly, the transfer order of 26 non-teaching staff was issued vide office order contained in memo No. 1186 dated 30.07.2019 and as such, there is no any illegality in issuance of such order.

Further, on perusal of counter-affidavit filed in **W.P.(S). No. 3909 of 2019**, it is crystal clear that on the basis of option exercised by the petitioners/clerks, the transfer order was issued which is in accordance with law. Further, the petitioner-Sangh are not registered rather they are only affiliated to Jharkhand Arajpatrit Karmchari Maha Sangh, Hinoo, Ranchi, who has not filed the instant writ petitions. Further, from perusal of I.A. No. 8145 of 2019 filed by the interveners/ respondents in **W.P.(S). No. 4062 of 2019**, it appears the most of the non-teaching staff themselves have submitted their representations for their transfer and considering the same and in view of administrative exigencies, the impugned orders of transfer have been passed and as such, there is no illegality in the impugned order.

10. In view of the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, there is no merit in the instant writ petitions and accordingly, the same are hereby dismissed.

11. As a sequel to the disposal of the aforesaid writ petitions, pending I.As. if any, also stand disposed of.

(Dr. S.N. Pathak, J.)