HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPS No. 6890 of 2021

Nirmal Toppo **Versus** State of Chhattisgarh & Others

01.09.2022	Mr. Abhishekh Sinha, Sr. Advocate alongwith Mr. Gary Mukhopadhyay, Advocate for the Petitioner. Mr. Sandeep Dubey, Dy. A. G. for the State. Mr. Neeraj Choubey, Advocate for the Respondent No. 3. The petitioner's grievance is mainly that respondent No. 3 is assistant engineer and he has been posted in his place. The learned counsel for the State vehemently opposes and would submit that they have assigned the reason of posting of the petitioner and now he is presently posted as Executive Engineer(E & M), Bilaspur. He would submit that the judgment passed by the Hon"ble Division Bench of this Court in WA No. 618/2019 will not come in rescue of the petitioner as the fact of the case is different. The Hon'ble Division Bench while examined Clause 2.14 of the transfer guideline has observed in paragraph 13 which read as under: "13Admittedly, the Petitioner is holding the office of the 'Executive Engineer', whereas the 4th Respondent is working only as an 'Assistant Engineer', much lower in the hierarchy of the posts. Clause 2.14 of the Transfer guidelines reads as follows: ''2.14 सामान्यतः स्थानांतरण द्वारा रिक्त होने वाले पद की पूर्ति उसी पद के समकक्ष अधिकारी की पदस्थापना से की जाए । वरिष्ठ अधिकारी का स्थानांतरण कर उस पद का प्रभार कनिष्ठ अधिकारी को न दिया जाए ।'' Though, transfer is an incidence of service, the service jurisprudence does not contemplate transfer and filling up the posts between two different cadres, unless the exigency is so imminent to place an officer of a lower level against a post at higher level, giving the charge. As mentioned already, the

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Appellant has been suffering transfer almost every or alternate year from 2004, shifting him from one place to another. In the year 2012, there were two instances of such transfer and later, he was transferred to Jashpur in the year 2016 where he is continuing. This by itself shows that the Appellant/Petitioner was serving the Department; discharging duty at the transferred place, without resistance, to meet the organisational requirement. It may be true that the Appellant has completed the tenure of three years at Jashpur and can be transferred out, if the 'administrative exigency' so demands. At the same time, it has to be noted that, every person who has completed the tenure of three years requires to be transferred, unless there is any 'administrative exigency' or somebody having a better claim has sought for posting to such place. “

The return filed by the State is silent to this observation and it does not speak about what was exigency arrived to post one assistant engineer in place of Executive Engineer.

Accordingly, this Court to give one more opportunity to the State, is directed to file affidavit indicating what is the reason of posting one Assistant Engineer in place of Executive Engineer and whether the executive Engineer is not available in the Department or post of Assistant Engineer still lying vacant.

Let the Secretary (PWD) file an affidavit indicating what are the consideration to post the assistant engineer in place of Executive Engineer despite the observation of the Hon'ble Division Bench of this Court.

Post this matter on **20th of September, 2022.**

Interim relief granted earlier shall continue till the next date of hearing.

Sd/-

(**Narendra Kumar Vyas**)
Judge

Amita

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