

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4107 of 2015

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Khalil, Ahmad son of Late Abdul Majeed, R/o Mohalla - Afzalpur, P.O.- Mahendru, P.S.- Pirbahore, District - Patna, at present posted as Urdu Typist at Piro Block, P.S.- Piro, District - Bhojpur, Ara.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Cabinet Secretariat and Raj Bhasha, Govt. of Bihar, Patna.
3. The Secretary, General Administration, Govt. of Bihar, Patna.
4. The Director, Urdu Directorate, Raj Bhasha Department, Govt. of Bihar, Patna.
5. The Dy. Director, Urdu Directorate, Raj Bhasha Department, Govt. of Bihar, Patna.
6. The District Magistrate, Bhojpur.
7. The Sub-Divisional Officer, Piro, District - Bhojpur, Ara.
8. The Block Development Officer, Piro Block, Piro, District - Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abdul Wadood

For the Respondent/s : Mr. SC32-R.K.PRIYADARSHI

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 24 -07-2015

Annexure- 19 dated 7.2.2013 issued under the signature of the Secretary, Department of Cabinet Secretariat and Raj Bhasha, Government of Bihar, is under challenge. By virtue of the said order, the Secretary has refused to grant salary for the period 1.4.2010 to 3.5.2012. However, this period was regularized as extra ordinary leave and for the purposes of counting the length of service for grant of pension.

2. Petitioner was appointed as an Urdu Typist when State

Government decided to declare Urdu as a second official language of the State. Besides Urdu typists even translators were appointed. The services of such people were supposed to be under the control of Urdu Directorate, Department of Raj Bhasha. It is the stand of the petitioner that the General Administration Department has no power or jurisdiction to transfer and post Urdu typists and translators.

3. Petitioner was appointed as an Urdu Typist way back on 8.9.1983 and was posted in Chandankyari Block, in the district of Dhanbad, now in the State of Jharkhand. Petitioner worked at various places of posting which are not matters of dispute as such. The problem arose when he came to be posted at Piro. The Sub Divisional Magistrate issued a notification on 1st September, 2009 (Annexure-5), by virtue of which petitioner was ordered to be transferred from block office to sub-divisional office on deputation. This was done looking at the importance of work at the sub-divisional level. Petitioner was relieved by the Block Development Officer, Piro on 29.10.2009. Petitioner protested against issuance of such orders, contained in Annexure-5 and 6 and demanded its cancellation on the basis of certain decisions taken by Urdu Directorate, which precluded transfer or deputation of such personnel. One such communication has been brought on record as Annexure-10. Thereafter, many a reasons have been given as to why petitioner went on leave on 25.11.2009 and how



he could not report back and give his joining. The authenticity of such reasons given in the writ application is not required to be tested. Sum essence is that the petitioner never complied with the order and continued to hover around the office of the Block Development Officer trying to get his joining accepted. When nothing materialized, he moved the High Court by filing CWJC No.2482 of 2012.

4. Learned Single Judge after hearing the petitioner, disposed of the matter with a direction upon the Principal Secretary to take a decision on the grievance of the petitioner. Even a contempt application was filed for non-compliance of the so-called direction of the learned Single Judge. When the contempt application was taken up, the impugned order, contained in Annexure-19, was produced, based on which the contempt application (Annexure-18) stood disposed of with liberty to the petitioner to challenge the same. It is in this background that the present writ application has been filed.

5. The broad submission of the counsel for the petitioner is that the order of transfer in the very first place was illegal and beyond jurisdiction. Petitioner was prevented from joining and working and, therefore, the decision not to pay him salary from 1.4.2010 to 3.5.2012 was arbitrary and irrational.

6. Many of the allegations made by the petitioner with regard to the transfer as well as non-joining or absence has been



seriously disputed. The matter was looked into very closely and a detailed report of Deputy Collector, Land Reforms, Piro, has been annexed as Annexure-A. The entirety of facts culled out from the record has been dealt with. This is Annexure-A to the counter affidavit and this position was also communicated to the Director, Urdu, Government of Bihar, through Annexure-B. This formed the basis for passing of Annexure-19.

7. The facts not only indicate that the petitioner only made a lame excuse for a long period of absence from duty and all the story which has now been narrated in the writ application is basically an after-thought and justification to cover up long period of absence. It is absolutely clear from the materials that the petitioner was in complete defiance and wanted to avoid and ignore the order of transfer at any cost.

8. Even if for the sake of argument, it is accepted that the authority, who issued the order of transfer or deputation of the petitioner, exceeded his jurisdiction, the petitioner cannot unilaterally decide not to obey. If such an indulgence or concession is given to a Government servant, the court cannot imagine what shall be the fall out on the administration at large.

9. It was open to the petitioner to approach the superior authority and point out the infirmities in the decision so taken. He

cannot decide unilaterally not to obey the orders and thereafter make a cock and bull story as to the reasons why he remained absent from duty for such a long period of time.

10. Petitioner invited the present problem because of his indiscretion. The facts are evident from Annexure-A and stand taken by the State in the counter affidavit. This Court is not therefore willing to award the petitioner for his own omission and indiscretion by interfering with Annexure-19 which is well justified in the given facts.

11. Writ application therefore stands dismissed as Annexure-19 does not require any interference.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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