

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4370 of 2014

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Dinesh Chandra son of Late Sahdeo Das, resident of Village - Dhobidih,
Police Station - Rajoun, District - Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Planning and Development
Government of Bihar, old Secretariat Bihar, Patna
3. The District Magistrate, Purnea
4. The Superintending Engineer, Local Area Engineering Organisation,
Work Circle, Purnea, District - Purnea
5. Smt. Lesi Singh (Member of Legislative Assembly from Dhamdaha
Constituency) wife Of Late Butan Singh,
District Purnea
6. Smt. Beema Bharti (Member of Legislative Assemble from Rupauli
Constituency) wife of Awadhesh Mandal,
District - Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Yogesh Chandra Verma,Sr.Advocate
Dr.Bipin Chandra, Advocate

For the Respondent

Nos. 1 to 4 : Mr. Prabhu Narayan Sharma, AC to Advocate General

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

7 08-01-2015 The petitioner, an Executive Engineer posted in Local Area Engineering Organization, Work Division II, Banmankhi in the district of Purnea, has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of Notification No. 731 dated 19.02.2014 (Annexure-12 to the writ petition) issued under the signature of the Principal Secretary, Department of Planning & Development, Government of Bihar, Patna, whereby he has been transferred from the present place of posting at Banmankhi in the district of Purnea and has been posted as Technical Adviser to the Superintending Engineer, Local Area Engineering Organization, Work Circle, Trihut Division, Muzaffarpur.



2. Learned senior counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned notification contained in Annexure-12, has submitted that the impugned order of transfer is not sustainable on three grounds; firstly, the petitioner has been subjected to the order of transfer prematurely within a period of eight months from the date of his posting at Banmankhi, secondly, the impugned order of transfer is mala fide and has been passed at the behest of the then District Magistrate, Purnea and three local MLAs, out of them, two have been impleaded as the respondent nos. 5 and 6, and thirdly, there is no recommendation by the Establishment Committee for effecting the transfer of the petitioner from Banmankhi to Muzaffarpur on administrative ground. In support of the above contentions, he has placed reliance on some judgments and orders of this Court.

3. Learned AC to learned Advocate General, appearing on behalf of the respondent nos. 1 to 4, has strongly opposed the prayer made on behalf of the petitioner and has supported the impugned notification by referring to the averments made in the counter affidavit filed on behalf of the respondent no.2. According to him, impugned notification dated 19.02.2014 (Annexure-12) has been issued by the Principal Secretary of the Department after approval of Hon'ble the Chief Minister and further there are several serious charges against the petitioner, as a result of which for smooth functioning of the administration at Banmankhi he has been transferred from there on administrative ground. It is further contended that the impugned notification cannot be legally faulted. In support of the above contentions, he has also placed reliance on certain judgments of this Court as also

the Hon'ble Apex Court.

4. After having heard the parties at great length and taking into consideration the entire materials available on record, this Court finds that the petitioner was posted at Banmankhi in the district of Purnea as Executive Engineer by notification dated 28.06.2013 and he joined the post on 10.07.2013. This Court further finds that after his joining at Banmankhi on the post of Executive Engineer, there has been several complaints against the irregular and arbitrary functioning of the petitioner. The respondent District Magistrate, Purnea had reported about his insubordination. He is said to have been not attending the district level review meeting. This Court also finds that though certain complaints were made by the local MLAs including the respondent nos.5 and 6 against the irregular and improper functioning and working of the petitioner on the post of Executive Engineer, but the impugned order of transfer has not been passed at the behest of those MLAs. The petitioner has not been able to establish the allegation of mala fide against the respondent nos. 5 and 6 by producing cogent materials in support of such allegation. This Court fails to comprehend why the previous District Magistrate, Purnea could have any animosity against the petitioner. Indisputably, the previous District Magistrate who had reported the matter to the respondent Principal Secretary of the Department about irregular and arbitrary functioning of the petitioner as also his insubordination was no longer posted at Purnea, when the impugned notification (Annexure-12) was issued transferring the petitioner from Banmankhi to Muzaffarpur.

5. It is true that the transfer of the petitioner from Banmankhi to Muzaffarpur has been made prematurely i.e. after



eight months of his posting but that itself shall not invalidate the impugned notification of transfer. The plea taken on behalf of the petitioner that impugned notification of transfer is liable to be set aside by this Court on the ground that it was not recommended by the Establishment Committee for effecting the transfer of the petitioner from Banmankhi to Muzaffarpur cannot be countenanced. The identical issue had come up for consideration before a Division Bench of this Court in the case of **Man Singh Vs. The State of Bihar [1982 BBCJ 392]**. The Division Bench of this Court after taking into consideration a large number of judicial pronouncements of the Privy Council, Hon'ble Apex Court as also of this Court has laid down the law that in absence of any statutory rule framed by the Government in exercise of its powers under Article 309 of the Constitution of India, the executive instructions issued by the State Government will govern the conditions of service of the employees relating to policy and procedure of transfer. However, it has further been held that such instructions are only directory in nature but should be followed substantially. The Division Bench also opined that order of transfer in special circumstances without resolution of Establishment Committee shall not be held to be invalid.

6. It is not in dispute that the service of the petitioner is transferable one and he has been subjected to order of transfer within a period of eight months, but in view of the principles enunciated by the Division Bench, referred to above, the impugned notification of transfer cannot be nullified. Hon'ble Apex Court in the case of **State of U.P. Vs. Gobardhan Lal [AIR 2004 SC 2165]**, while considering the scope of judicial review in exercise of powers under Article 226 of the Constitution of India



relating to the orders of transfer of government employees has laid down the law in paragraphs 8, 9 and 10 of the judgment and has observed that the transfer of an employee is not only an incident of service rather an essential condition of service necessitated in the public interest. For efficient functioning of the public administration, an employee can always be subjected to an order of transfer. The Courts or Tribunals should not interfere with orders of transfer, issued by the competent authority, in a routine or casual manner, unless and until allegation of mala fide is proved by such government employee by producing cogent materials.

7. For the reasons recorded above, this Court is of the opinion that the impugned notification dated 19.02.2014 (Anenxure-12) transferring the petitioner from Banmankhi to Muzaffarpur cannot be legally faulted.

8. In the result, the writ petition has to fail and is, accordingly, dismissed. The interim protection granted by order dated 08.05.2014 stands vacated. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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(AFR)

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