

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2504 of 2014

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Ashutosh Kumar, S/O Late Surendra Prasad Singh, R/O Vill- Ghughuwa,
P.O.- Bankatwa, P.S.- Ghorashan, District East Champaran, Motihari
..... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Work Depart., Govt. Of Bihar, Patna
2. The Principal Secretary, Rural Work Department of Bihar, Patna
3. The Engineer-In-Chief, Rural Work Department, Government of Bihar, Patna
4. The Deputy Secretary, Rural Work Department, Govt. Of Bihar, Patna
5. The Superintendent Engineer Rural Work Department, Work Circle, Motihari
6. The Executive Engineer Rural Work Department, Work Division, Motihari

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate.
For the Respondent/s : Mr. Ram Balak Mahto, A.G.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
(Date - 14.07.2015)

Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:

"1. That this writ application is being filed for issuance of writ in the nature of certiorari for quashing memo no. 751 dated 22.01.2014 issued by respondent no. 3, Deputy Secretary, Rural Works Department, Government of Bihar, Patna by which services of the petitioner has been transferred from Rural Works Department, Work Division, Motihari in Rural Works Department, Work Division Gaya on the administrative ground whenever the petitioner is being Secretary of the Karamchari Union, since 21.09.2012, services of the petitioner should not be transferred as per Clause 1 of the Circular dt. 17.5.2006, if any several; senior to petitioner are working in the Department since 2003 whereas petitioner is working in the department since date of appointment i.e. 12.12.2011 and further issued direction to respondent consider case of the petitioner for posting within the District of Motihari and further give other legal consequential benefit attach to the post".

2. Learned counsel for the petitioner has submitted that
the impugned order of transfer of the petitioner is bad because he

has been sought to be transferred by the impugned order even before completion of normal tenure of three years and that without taking into consideration that the petitioner being the Secretary of the Karamchari Union since 21.09.2012 was protected by the Government Circular dated 24.10.1981 and 17.05.2006.

3. In this case, a counter affidavit has been filed wherein it has been stated that the transfer of the petitioner from Motihari to Gaya has been done on administrative ground inasmuch as a number of complains were received against him from different sources of his being not only involved in the local disputes but also abusing the local villagers under the influence of intoxication. In support of such stand, the respondents have enclosed the copy of a complaint, as contained in Annexure-A, B and C of the counter affidavit.

4. In the considered opinion of this Court, whatever materials have been brought on record, will go to show that the petitioner, in a very short tenure, has acquired a very bad name for himself. There is no also denial by the petitioner to the averments made in the counter affidavit that a number of persons had filed complains with regard to indiscipline behaviour of the petitioner and as a matter of fact, the Government had to call for a report from the Executive Engineer, Motihari being the controlling authority of the petitioner.



5. The Executive Engineer in his report dated 28.11.2013 sent to the Government had put on record that the petitioner was an arrogant and indisciplined employee whose work was not satisfactory and his relation with several employees of Motihari Division was also not cordial. In such report, the Executive Engineer had also supported the repeated complaints, being filed against the manner of working of the petitioner, wherein he was found to have been causing unnecessary delay for his personal gains. In this regard, the Executive Engineer, in his report to the Government dated 28.11.2013, had also referred to the earlier reports of his predecessors Executive Engineer with regard to unsatisfactory service of the petitioner. It, thus, becomes clear that there were adequate reasons for the Government to transfer the petitioner and the transfer order dated 22.01.2014 is passed on administrative exigency.

6. The plea of the learned counsel for the petitioner that there is a Government Circular of giving normal tenure of three years, being merely an executive instruction that cannot be enforced by way of a writ application. This aspect of the matter stands settled by the Division Bench of this Court in the case of ***Maan Singh vs The State of Bihar & Ors.*** reported in ***1982 BBCJ 392.***

7. That so far the petitioner being the office bearer of



the employees Union and thus having protection of the Government Circular dated 17.05.2006, it has to be kept in mind that even that Circular is only an executive instruction and the same itself makes a provision that any office bearer of the employees Union, if found to have transgressed beyond the limit of discipline and/or performance of duty to be maintained by each and every Government servant, would not be entitled for protection of not being transferred on the ground of his being office bearer of the employees Union.

8. That apart, though the petitioner claims that he was Secretary of the employees Union but then as to whether the Bihar Rajya Gramin Karya Vibhag, Karmchari Sangh itself is a recognized Union, is not at all established. The claim of the petitioner that his employees Union was affiliated to Bihar State Non-Gazetted Employees Mahasangh affiliated to the Branch of Gope Union, can never be conclusive in nature specially when there is nothing on record with regard to such recognition being given by the Government.

9. In any event, even if an employee in office bearer has to maintain discipline and also to be an efficient worker because an indiscipline and/or inefficient Government servant, even on account of his being office bearer of a recognized trade union, does not get immunity from being transferred under

administrative exigency.

10. This Court must hold that there is no general immunity granted by law to office bearers of employees Union from being transferred, if such transfer is made for genuine administrative reasons. Such transfer can be made if there is administrative exigency. Here, in the present case, apart from others, even the employees Union were complainant against the rustic behaviour of the petitioner. The report of the Executive Engineer, Motihari, as referred above, will itself go to show that there was an urgent requirement for transfer of the petitioner. All these facts stated in the counter affidavit specially in para nos. 4 to 9 reading as follows:

"4. That at the outset it is stated that the petitioner has not stated the true fact. It is further stated that the petitioner was posted as Lower Division Clerk in the office of the Executive Engineer, Works Division Motihari. A serious complaints were received in the office against him. The Mukhiya of Gram Panchayat Raj and some villagers of Ghorasahan reported that the petitioner Ashutosh Kumar, is a drunk card and he is habituated of abusing the villagers in drunken mood and always create tension in the village. As such request of his transfer was received.

5. That it is also pertinent mention that in this regard a report was also send by the Executive Engineer to the Under Secretary to the Govt. Rural Works Department Government of Bihar, Patna vide was letter No. 1999 dated 28.11.2013, in which it was reported that the petitioner is of arrogant nature and his activities are not satisfactory. His behaviour with the other employees of the division is not amicable. Report against him always do unnecessary delay in the work for his own benefit. He intimidated in the light of the above complain, factual report sort from the Executive Engineer, Works Division, Motihari vide Rural Works Department letter No. 12676 dated 19.11.2013.

6. That in the light of the above complaint, factual report sought from the Executive Engineer, Works Division, Motihari, vide Rural Works Department letter No. 12676 dated 19.11.2013. In which it was reported that the petitioner is an indisciplined and of arrogant nature. His behaviour with other employees of the division is not

amicable. He intentionally detains the files of the Division for his self benefits.

7. That earlier, the Executive Engineer had reported vide his letter No. 2799 dated 18.12.2012 stating therein that the petitioner intimidated the Executive Engineer that if demand of the union was not fulfilled office will be locked and unwarranted incidence may occur in anytime. It was also reported that the petitioner is never skilled in to perform his assigned duties rather he is engaged in extorting money from the simple and gentle employees. In the light of this he had requested to transfer the petitioner.

8. That it is also to pertinent mention here that a complaint was also received in the office of the Secretary Cell, Rural Works Department, on 18.10.2013 from the Minister Cell, Rural Works Department against the petitioner in which several allegations has been made against the petitioner.

9. That on the facts and in the circumstances stated herein above, it is apparent that the transfer of the petitioner was made on administrative ground and it is submitted that the transfer is co-incident of the service and no one can claim to post him on his own choice. Hence, the present writ application is devoid of any merits and fit to be dismissed."

have also not been controverted though copy of such counter affidavit was served on the learned counsel for the petitioner on 23.04.2015.

11. Thus, on the basis of materials on record, this Court would find that the plea of administrative exigencies has specifically mentioned in the impugned order of transfer is correct and justified.

12. To top it all, learned counsel for the petitioner has submitted that during pendency of this writ application, the petitioner had already complied the order of transfer and is working at his transferred place though such joining of the petitioner is subject to the result of this case. This Court keeping in view that the transfer order of the petitioner is justified both on fact and in law, would however refuse to interfere with the same.

13. At this stage, learned counsel for the petitioner prays for an opportunity to enable the petitioner to file a representation to the Government which had transferred the petitioner from Motihari to Gaya for reconsidering his case of transfer on the ground of his being office bearer of the Union. This Court will have no difficulty in giving such liberty to the petitioner but it is made clear that any decision of the Government in relation to transfer of the petitioner shall be taken only if the provisions made in the Government Circular dated 17.05.2006 could still be made applicable in the case of the petitioner, who after being transferred from Motihari to Gaya has no longer remained to be office bearer of Union at Motihari and his tenure of Secretary of the employees Union has also been completed in the year 2014 itself.

14. With the aforementioned observation, this writ application is disposed of.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 14th July 2015
A.F.R./Sujit/-

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