

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1778 of 2015

IN

Civil Writ Jurisdiction Case No. 11851 of 2015

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1. Purushottam Kumar Jha, son of late Kishori Nath Jha, resident of Dharampur (UJan) P.O.- Lohna Road, P.S.- Sakatpur, Distt- Darbhanga Bihar(Correspondance Address), Purushottam Kumar Jha, C/o Sri Rama Kant Pathak, 4/67, Indrapuri, P.O.- Keshrinagar, Patna-24. is basically field clerk but is conditionally deputed as a law officer cum legal Assistant in the co-operative department, Govt. of Bihar, New Secretariat, Patna as well as is posted as a clerk in the office of the Assistant Registrar, co-operative societies, Danapur, P.O.- Danapur Cantt- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Cheif Secretary, Bihar Old Secretariat, Patna- 800015.
2. Sri Chaitanya Prasad, Principal Secretary, Department of Co-operation, Govt. of Bihar, New Secretariat, Patna- 800015.
3. Sri Ajaury Kumar Chaudhary, Registrar, Co-operative Societies, Bihar, New Secretariat, Patna- 800015.
4. Sri Vikas Kumar Bariyar, Assistant Registrar, Co-operative Societies (Khadi) Bihar, East Gandhi Maidan, Patna- 800001. and Deputed on the post of Assistant Registrar (leave Reserve) in the office of Resp. No.3.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Purushottam Kumar Jha (in person)

For the Respondent/s : Mr. Vikash Kumar, AC to AG

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 09-10-2015

Aggrieved by an order, dated 28.08.2015, passed by a learned single Judge in CWJC No. 11851 of 2015, whereby writ application filed by the appellant has been dismissed, present appeal under Clause 10 of the Letters Patent of the Patna High Court has been filed.



2. The appellant had approached this Court by filing the aforesaid writ application under Article 226 of the Constitution of India, seeking quashing of an order, dated 30.06.2015, passed by the Registrar, Cooperative Societies, Government of Bihar, whereby the appellant was transferred from the office of District Cooperative Officer-cum-Assistant Registrar, Cooperative Societies, Danapur, and posted in the office of District Cooperative Officer-cum-Assistant Registrar, Cooperative Societies, Madhubani.

3. From the order, dated 30.06.2015, it transpires that on administrative ground and in public interest, the respondents had decided to transfer their employees, in the cadre of Clerk, under the Registrar, Cooperative Societies, Government of Bihar, who were posted at a place for more than three year, and it was in the exercise so undertaken that the appellant was, amongst many others, transferred.

4. By the impugned order, a learned single Judge of this Court has dismissed the writ application on the ground that the transfer of the appellant was one in a chain of transfers.

5. We have heard the appellant in person and Mr. Vikash Kumar, learned Assistant Counsel to learned Advocate General, appearing on behalf of the State.

6. It is submitted, on behalf of the appellant, that the order, transferring him from Danapur to Madhubani, is tainted with *mala*

fide.

7. We have carefully perused the pleadings and the materials brought on record. We find, on the basis of the pleadings on record, that the appellant has not been able to make out any case of personal *bias* or *mala fide* as the reason behind the issuance of impugned transfer order. Much emphasis has been laid by the appellant on Resolution No. 434, dated 01.03.2007, and letter No. 881, dated 03.06.2009, issued by the Cabinet Department, Government of Bihar, in support of his submission that as per the said order, only 10% of the total strength of the cadre could be transferred every year by the competent authority and 300 being total strength of the cadre to which the appellant belongs, only 30 persons of the cadre could have been transferred, whereas as many as 90 persons have been transferred at one go by the impugned transfer order.

8. Learned Assistant counsel appearing on behalf of the State of Bihar, on the other hand, has submitted it was a routine order, made by the Department in the month of June, transferring the appellant from the office of Assistant Registrar, Cooperative Societies, Danapur Anchal, Danapur, as he had completed more than three years at the place of his posting. He has contended that the transfer of a Government servant is an incidence of service and unless such transfer is found to be beyond jurisdiction, *mala fide* or contrary

to any statutory provisions, it should not be interfered with and the learned single Judge has rightly dismissed the writ application.

9. We find substance in the submission made on behalf of the respondents, State of Bihar.

10. We may point out that transfer of a Government servant is a purely administrative decision and the Court, exercising power of judicial review under Article 226 of the Constitution of India, is not required to interfere with such administrative decision except when it is absolutely necessary on account of violation of fundamental right, legal right or if the decision to transfer is beyond jurisdiction or is tainted with *mala fide*. Reference can be made, in this regard, to Supreme Court's decision in case of ***State of Haryana Vs. Kashmira Singh (2010) 13 SCC 306***. Reference may also be made to the Supreme Court's decision in case of ***State of n U.P. Vs. Gobardhan Lal (2004) 11 SCC 402***, wherein the Supreme Court has held that even administrative guidelines for regulating transfer or containing transfer policies cannot have the consequence of depriving or denying the competent authority the power to transfer a particular Government servant to any place in public interest if found necessitated by exigencies of service as long as the official status is not affected adversely. Guidelines or policies of making transfer may, at best, afford an opportunity to the Government servant to approach higher

authorities.

11. Having considered the grievances of the appellant, we do not find that the impugned order of transfer calls for any interference by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, when the impugned transfer order is neither in breach of any rules nor any policy decision, which is inflexible. We also do not find that the order of transfer aforementioned suffers for *bias* or *mala fide*. We, therefore, find not merit in this appeal.

12. We may also point out that we have gone through the counter affidavit filed on behalf of the respondents and have perused the order of the Supreme Court passed in Civil Appeal No. 2234 of 2006, which was preferred by the appellant in a matter arising out of disciplinary action taken against him.

13. Referring to the said decision of the Supreme court, learned Assistant Counsel, representing the State of Bihar, has submitted that the appellant is a litigious person and has raised certain issues in the present proceeding, which are uncalled for and highly reprehensible. We restrain ourselves from making any comment for the purpose of present adjudication, because such comments may be prejudicial to the interest of the appellant.

14. Situated thus, in our considered view, this appeal

deserves to be dismissed, which we accordingly do.

15. In the result, this appeal is dismissed, but without any order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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