

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18503 of 2013

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Sanjay Kumar Son Of Late S.N. Yadav Resident Of At + P.O. Ajhour, P.S.
Nimachandpura, District - Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary S.C. And S.T. Welfare Department, Government Of Bihar, Old Secretariat, Patna
2. The Secretary, S.C. And S.T. Welfare Department, Government Of Bihar, Old Secretariat, Patna
3. The Director, S.C. And S.T. Welfare Department, Government Of Bihar, Patna
4. Dy. Director Welfare, Purnea Division, District - Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh, Adv
For the Respondent/s : Mr. Ram Balak Mahto, AG

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 20-03-2015 Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order of his transfer dated 12.08.2013.

3. Learned counsel for the petitioner has submitted that the aforesaid order of transfer has been passed in a punitive manner only because the petitioner had not complied the illegal order of the Director of SC & ST Welfare Department, Government of Bihar, Patna.

4. From the averments made in the writ application, this Court would find that the said allegation



of personal malafide in fact is distinguishable from the concept of malice in law, which has not been satisfactorily explained because the person concerned against whom the allegation has been sought to be made has not been made party by name in this writ application.

5. This Court therefore would find it difficult to accept the allegation of malafide.

6. For the rest of the grievance of the petitioner that he was transferred within a period of 11 months. This Court must hold it to be misconceived because there is no statutory Rule laying down that the transfer will be made only after a period of three years. This Court will not be in a position to interfere with the impugned transfer on the basis of State government policy of transfer because such policy is out and out executive instruction and has got no statutory force. Reference in this connection may be usefully made to the judgment of the Division Bench of this Court in the

case of **Maan Singh vs the State of Bihar** reported in **1982 BBCJ 392**.

7. Once, this aspect therefore, becomes clear that the petitioner is aggrieved on account of non observance of the policy decision, remedy for him again will be by way of filing representation, as was laid down by the Apex Court in the case of **Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna, reported in AIR 1981 SC 1577**, wherein, it was held as follows:-

“Having heard learned counsel for the parties, we are of the opinion that the High Court rightly declined to interfere with the impugned order. Transfer of a Government servant may be due to exigencies of service or due to administrative reason. The Courts cannot interfere in such matters. Shri Grover, learned counsel for the appellant, however, contends that the impugned order was in breach of the Government instructions with regard to transfers in the Health Department. If that be so, the authorities will look into the matter and redress the grievance of the appellant.”

8. Thus while this Court would refuse to interfere with the order of transfer of the petitioner, it would give liberty to the petitioner to file fresh representation keeping in view that the earlier representation filed by the petitioner during the pendency of this writ

application had never led to any result as the matter was subjudice before this Court. Thus if the petitioner even now files fresh representation against the order of his transfer, the competent authority namely, Secretary to the Health Department shall take his appropriate decision as may be permissible in law.

9. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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