

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9420 of 2015

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Satish Chandra son of Sri Uma Kant Singh, resident of village- Sahgajipur, P.O. Rajabigha, P.S. Narhat, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Rural Works Depttment, Government of Bihar, Patna.
3. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.
4. Akshay Lal Rajak, son of not known, presently posted as Assistant Engineer, Works Sub-Division, Tarari, Work Division, Pero, Bhaojpur at Ara.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.

For the Respondent/s : Mr. Ram Balak Mahto, AG

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 27-07-2015

Heard learned counsel for the parties.

2. In this writ application, the petitioner has assailed his order of transfer from Makhdumur, Jehanabad to Samho Akha Kurha in the district of Begusarai.

3. Mr. Y.V. Giri, learned senior counsel for the petitioner, has submitted that there was no justifiable reason to transfer the petitioner, who had completed merely a period of fourteen months pursuant to his direct appointment and posting at Makhdumpur on 21.2.2014/25.2.2014. He expands his submission by placing reliance on a government circular which lays down that ordinarily a person shall be posted to one place for three years but, in exceptional cases, a



person, not even completing three years of posting at one place, can be transferred, if he has completed a period of two years. On the basis of the aforesaid circular, Mr. Giri is of the view that transfer of respondent no.4 earlier working at Tarari to Makhdumpur was by way of accommodating him at the place of the petitioner and the same was done on the recommendation of the local M.L.A., namely, Sri Abhiram Sharma.

4. This Court on an earlier occasion had found it necessary to peruse the government record as to whether the transfer of the petitioner was made on Pairvi/recommendation of the local M.L.A. From the records that has been produced by the learned counsel for the State being File No. 5/अ०प्र०-1-60/2015, it does not transpire that the order of transfer of the petitioner was made on the basis of any political Pairvi/recommendation of the local M.L.A., namely, Sri Abhiram Sharma. As a matter of fact, such allegation of malafide, in absence of local M.L.A., having been not made party to the writ application, cannot be also gone into. Thus, this Court would find it difficult to interfere with the order of transfer only on the ground that the transfer of the petitioner was made on Pairvi/recommendation of the local M.L.A.

5. That would leave this Court to decide as to whether the government circular, as with regard to transfer of an officer on



completion of three years, is mandatory so as to be enforced in writ jurisdiction. Apart from the fact that law in this regard has been well settled by the Division Bench of this Court in the case of *Man Singh Vs. The State of Bihar & Ors.* reported in *AIR 1982 BBCJ 392* holding such circulars to be mere directory in nature and they do not confer any right much less can be enforced in writ jurisdiction, this Court would find it difficult to interfere with the order of transfer of the petitioner on the ground that he has not completed a period of three years on his previous place of posting at Makhdumpur.

6. This Court has also perused the government record from which it is apparent that since the respondent no.4 had already completed a period of three years as is also raised by him in the counter affidavit, that had necessitated also the transfer of the petitioner. In fact, such chain transfer of as many as 224 persons in different category such as for the persons who were waiting for posting or for the persons who had sought also their transfer on account of their wife being also working at one place or some other reasons including completion of a period of three years cannot be examined on the parameter of the tenure of a person. This is a chain transfer in which the department had to find out not only the persons to be transferred but also the replacement to be made. Admittedly, the petitioner was holding a transferable post and, therefore, if the

petitioner is sought to be displaced on the ground of completion of a period of more than three years of respondent no.4, that cannot be said to without any administrative exigency.

7. Nonetheless, the petitioner has already filed a representation giving reasons for being retained in the same place and also pointed out availability of two posts in the same division, one at Kako and others at Ghosi. In fact the petitioner in the representation had also indicated that he has got no difficulty even in functioning of the post of Estimating Officer in place of Assistant Engineer.

8. All these aspects, therefore, need to be considered by the respondents and this Court, therefore, without interfering in the transfer order of the petitioner, would only direct the respondent, namely, the Secretary to the Rural Works Department to take a decision for giving a fresh posting to the petitioner in the light of the facts stated by him in his representation dated 30.06.2015 as contained in Annexure-5.

9. This Court hopes and believes that such a decision will be taken expeditiously and preferably within a period of one month from the date of receipt of this order.

10. It is, however, made clear that as the respondent no.4 has already joined on the post held by the petitioner, the petitioner must comply the order of transfer and if his representation is decided

in his favour, he may join on the fresh place of posting.

11. Mr. Giri, in fact, has informed this Court that the petitioner will be handing over charge to respondent no.4 within a period of three days from today which in turn would enable the respondent no.4 to discharge his duty on the post on which he had already joined by way of assuming charge of the post held by the petitioner. Thus the petitioner is also directed to handover charge of his post to Respondent no. 4 within a period of three days and should also join on the transferred post, if not done by him as yet.

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

(Mihir Kumar Jha, J)

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