

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11187 of 2016

Arvind Kumar Singh son of Late Bhuneshwar Singh Resident of Mohalla Bajrangpuri, Gayghat, P.S. Alamganj, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Building Construction Department, Government of Bihar, Patna
2. The Joint Secretary, Building Construction Department, Government of Bihar, Patna
3. The Executive Engineer, Patna Building Division, Patna
4. Rana Vidhyadhar, son of not known to the petitioner, Assistant Engineer, P.M.C.H. Sub Division, Patna Building Division, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mrs Shashi Priya Pathak

For the Respondent/s : Mr. P.N.Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-09-2016

Heard learned senior counsel for the petitioner and the counsel for the State. There is none to represent respondent no.4

Submission of the counsel for the petitioner is that within a year the petitioner has been transferred from his present place of posting at the instance of a Member of Legislative Assembly, which is evident from reading of Annexure- 6, dated 15.6.2016. Allegations have been made by the MLA, who has written a letter to the Deputy Chief Minister –cum- Minister for Building Construction Department, Government of Bihar. This led to issuance of the notification contained in Annexure- 1. Name of the petitioner figures

at serial 33. In place of the petitioner, private respondent no.4 has been posted. Many a things have also been said with regard to respondent no.4.

From the materials available on record, it seems that the present decision to effect transfer of the petitioner has been taken for extraneous reasons and for, may be political consideration. The law on this subject had been laid down by this Court three decades ago in the case of **Abdul Muttalib vs. the State of Bihar & others reported in 1985 BBCJ 557: 1985 PLJR 931**. This is what the Division Bench had to observe :

“8. The democratic system of which all of us are party conceives that an executives officer should not be under political pressure, so that he can perform his duty in an objective and fearless manner. But, of late, several cases have been coming to this court where an officer can produce materials to show that he has not been transferred from a particular place in normal course of business of the State but really he has been ousted for an ulterior purpose. This is bound to cause demoralization and a situation of helplessness in many cases. As such, in my view, if on materials this court is satisfied that the transfer of the officer concerned has been engineered, then such order has to be tested on the touchstone of Articles 14 and 16 of the

Constitution.

9. *It is true that in respect of an order of transfer of an officer, perhaps, no civil or evil consequence is involved because transfer is an integral part of public employment. But, will the court uphold even an order of transfer where it appears that the authority concerned has surrendered its discretion and judgment in respect of administrative exigency to a source which is not supposed to decide that question? Can it reject an application in which an order of transfer has been challenged although the Court is satisfied that it is not in normal course of event, but amounts to ouster of an officer from a particular place at the instance of a particular individual? While hearing writ applications, we have come across cases where M.L.As of the locality have been writing to the Ministers or Chief Minister concerned in respect of the transfer of officers from their locality. In one case we found that on such request an officer was not only transferred, but a copy of the order of transfer was formally communicated to the M.L.A./ M.L.C. concerned. It has been rightly submitted on behalf of the respondents that M.L.A./ M.L.C. being the representative of the people has certainly a right to bring to the notice of the Government any act of omission or commission of a public servant. But, whether*



such right extends to get an automatic transfer of such an officer? The representative of people can certainly bring to the notice of the authorities concerned the inaction or improper action of an officer in his locality but then the State Government has to apply its independent mind whether it will be in the interest of administration of the State that such an officer should be transferred irrespective of the period for which he has stayed at such a place. In my opinion, whenever any complaint is made against an officer by a representative of the people, it should be examined by the State Government and an independent decision should be taken so that in many cases public servants do not become victim of local machination.

10. From the admitted facts of the present case it is apparent that the M.L.A. of the area even before the petitioner had joined the post in question, addressed a letter to the Chief Minister requesting him to transfer Respondent no.4 from Ekma and post him as Block Development Officer, Mairwa. I can appreciate that a representative of the people can complain about an officer who has been posted in his locality, but can he even suggest the names of the officers who should be posted in his locality? In my view, the answer is in negative. In the

instant case, admittedly the State has yielded to that request and the petitioner is affected by that. Learned counsel for the State could not place any material although the case was adjourned on different dates, to show even in a prima facie manner that the petitioner has not been transferred, to accommodate respondent no.4, at the instance of the M.L.A. aforesaid. On behalf of respondent no.4 also nothing could be pointed out to controvert the assertions made on behalf of the petitioner.

11. In such a situation, I am left with no option but to allow this writ application and quash the impugned order of transfer dated 24.8.1984 and to direct the State to apply its independent mind on the question of transfer of the petitioner. It will be open to the State to issue a fresh order of transfer in accordance with law. There will be no order as to cost."

The Deputy Chief Minister –cum- Building Construction Department Minister may be a greenhorn with regard to his present responsibility but since he is holding a high post of responsibility, he is supposed to know the law as well as abide by the law and not get influenced and persuaded by letter having been written by a Member of Legislative Assembly, who has nothing to do even with regard to place of posting of the present petitioner since he does not belong to

the constituency.

In the given facts as well as the law laid down by the Division Bench of the High Court, the impugned order contained in Annexure- 1 and the consequential order contained in Annexure- 2, dated 2.7.2016 are quashed insofar as it relates to the petitioner. The petitioner would be restored back to his original place of posting.

Writ is allowed.

(Ajay Kumar Tripathi, J)

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AFR/NAFR	AFR
CAV DATE	
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