

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8829 of 2017

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1. Smt. Usha Kumari W/o Ramashish Prasad R/o Village- Kaushik Nagar, P.O.+ P.S.- Hilsa, District- Nalanda.
 2. Neelam Kumari W/o Manoj Prasad R/o Village- Adarsh Nagar, P.O.- Biharsharif, P.S.- Biharsharif, District- Nalanda.
 3. Priyedarshani Kumari W/o Jalindar Kumar R/o Village- Bari Ghosi, P.O.- Daha Bigha, P.S.- Hilsa, District- Nalanda.
 4. Renu Kumari W/o Kumar Dheeraj R/o Village- Sardar Bigha, P.S.- Noorsarai, District- Nalanda.
 5. Savitri Kumari D/o Late Sudama Chaudhari R/o Village- Jeetan Bigha, P.S.- Telhara, District- Nalanda.
 6. Meena Kumari W/o Arbind Kumar R/o Village+ P.O.- Nanand, P.S.- Noorsarai, District- Nalanda.
 7. Suprabha Kumari W/o Satya Prakash R/o Village+ P.O.+ P.S.- Islampur, District- Nalanda
 8. Madhu Kumari W/o Shri Mahendra Prasad R/o Village- Andhanna More, P.O.+ P.S.- Noorshari, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Health Department, Government of Bihar, Patna.
2. Director- In- Chief, Health Department, Government of Bihar, Patna.
3. Regional Deputy Director, Health Services, Patna Division, Patna.
4. Civil Surgeon-cum- Chief Medical Officer, Nalanda.
5. District Magistrate, Nalanda.
6. In- Charge Medical Officer, Primary Health Centre, Hilsa, Nalanda.
7. In- Charge Medical Officer, Primary Health Centre, Rahui, Nalanda.
8. In- Charge Medical Officer, Primary Health Centre, Noorsarai, Nalanda.
9. In- Charge Medical Officer, Primary Health Centre, Akangarsarai, Nalanda.
10. In- Charge Medical Officer, Primary Health Centre, Islampur, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Ashok Kumar
For the State : Mr. Shakib Ayaz, A.C. to G.P.-12

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

3 12-09-2017 Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the State.

The petitioners being A.N.M.s who were transferred by



means of various orders to their respective places of posting on the basis of the applications made by them are now sought to be transferred by an order dated 14.06.2017 which is purported to have been issued by the Civil Surgeon-cum-Chief Medical Officer, Nalanda (Annexure-4). The said order clearly states that the impugned transfers are being made on the basis of an instruction received from the District Magistrate, Nalanda contained in Memo No. 496 dated 07.06.2017 which has been brought on record by the Respondents by way of Annexure-B. The said Annexure-B has been issued from the office of the District Magistrate. At paragraph No. 8 of the said letter, it has been noted that in flood affected areas the recent transfers made should be cancelled forthwith and the Health Department employees be placed on deputation in the said area. It is to be noted here that it has been mentioned in the letter of the District Magistrate, Nalanda, that the sole ground for which such instruction was being issued is that it is the season of floods and, therefore, the said action is to be taken and complied with by the Civil Surgeon, Nalanda.

Learned Senior Counsel appearing on behalf of the petitioners submits that the entire reason recorded in the impugned letter as well as the letter on which it has been posted is non est as



till date, there has been no flood in the area. It is further submitted that, if at all, such an eventuality would have taken place, the petitioners having been placed in their respective places could well have been placed on deputation rather than cancelling their earlier order.

Learned Senior Counsel further contends that in view of the non est ground on which the impugned order has been passed and also because the District Magistrate alone cannot take such an arbitrary decision without making the Civil Surgeon participate in the same, the impugned order stands vitiated and is fit to be set aside.

Learned counsel appearing on behalf of the State, however, submits that the impugned order has been passed as a preventive measure to aid the flood victims and has been issued by the District Disaster Management Cell which is in public interest and, therefore, does not call for any interference under Article 226 of the Constitution of India.

However, in the facts and circumstances of the case, it appears that the present petitioners had been placed at their respective places of postings only recently and from the month of January to the month of May, they had already reported and joined on their respective places. The orders which were passed, were in



their interest and the applications made by them which had been duly considered and on appreciation thereof the petitioners had been placed at their respective places of postings.

Having gone through the entire facts and circumstances of the case, this Court noticed that the District Magistrate, Nalanda who had purportedly issued directions in the interest of public has passed such instructions without taking into consideration the reasons for which the petitioners had been posted. Moreover, the ground which has been stated in the said order is also non est and till date there is no report of any flood in the concerned district. Thus, it is patently and manifestly clear that the order has been passed on non est ground. As such, this Court fails to appreciate the action taken by the respondents and is inclined to interfere under Article 226 of the Constitution of India. This Court is also conscious of the position that transfer is an incidence of service and can well be done for administrative reasons, but such an action cannot be stretched so far as to prejudice the employee on the non est reasons which has been deployed in the garb of administrative decisions.

In the result, the present writ application is allowed.

The impugned order as contained in Annexue-4 (Memo No. 1704/Biharsharif dated 14.06.2017) issued by the Civil Surgeon-



cum-Chief Medical Officer, Nalanda is set aside and the petitioners are directed to be reverted back to their places of postings where they have been functioning on the date of transfer.

(Anjana Mishra, J)

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