

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.10963 of 2017

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Sri Chakreshwar Kumar Sharma, S/o Late Brij Bihari Sharma, Block Agriculture Officer, Barh, Patna, Resident of Village and P.O.- Chiraura, P.S. Nauwatpur, District Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through Commissioner cum Secretary Department of Agriculture, Government of Bihar, Patna.
2. Commissioner cum Secretary, Department of Agriculture, Government of Bihar, Patna.
3. Director Agriculture, Government of Bihar, Vikash Bhavan, Patna.
4. The District Magistrate, Patna.
5. The District Magistrate, Aurangabad.
6. The District Agriculture Officer, Patna.
7. The District Agriculture Officer, Aurangabad.

.... .... Respondent/s

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#### Appearance :

For the Petitioner/s : Mr. Mahendra Prasad Bharti, Adv.

For the Respondent/s : Mr. Hari Shankar Roy, AC to AG

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

ORAL JUDGMENT

**Date: 09-11-2017**

Heard Mr. Mahendra Prasad Bharti, learned counsel appearing for the petitioner and Mr. Hari Shankar Roy, learned Assisting Counsel to the Advocate General.

The petitioner is aggrieved by the transfer order bearing Memo No.622 dated 30.6.2017 in so far as it relates to the petitioner whose name appears at serial no.35 and whereunder he has been transferred from the post of Block Agriculture Officer, Barh, Patna in the same capacity to Aurangabad.

This matter was last heard on 24.8.2017 when learned counsel for the petitioner invited the attention of this Court to an application filed by the petitioner before the Agriculture Director,



Bihar, Patna praying for voluntary retirement, a copy of which is present at Annexure 1 dated 28.1.2017 which has also been forwarded by the Block Development Officer, Barh to the District Agriculture Officer, Patna vide letter bearing no.206 dated 6.2.2017 at Annexure 2. It was submitted that even when the application of the petitioner for voluntary retirement is pending consideration before the Agriculture Director that the petitioner has been transferred to Aurangabad. It was again submitted by Mr. Bharti that the petitioner even otherwise is to superannuate with effect from 31.1.2018 and thus in terms of the own guidelines of the State Government as present in the circular dated 29.10.1980, which at paragraph 3 stipulates an accommodation to such of the Government employees who are to retire within one year of any proposed transfer the petitioner cannot be transferred.

It is taking note of the submissions that the State counsel was required to file counter affidavit and while allowing time to the State Counsel the transfer order dated 30.6.2017 in so far as it relates to the petitioner was stayed. Although a counter affidavit is filed on behalf of the respondent nos.5 to 7 but the concerned authority i.e. the Director, Agriculture has failed to respond to the writ petition.

The counter affidavit at paragraph 12 gives a very interesting situation where it admits that the post on which the



petitioner was transferred at Aurangabad was already occupied by one Shashi Kant Sharma who is yet to be given any transfer order. In other words, the post against which the petitioner has been transferred vide order dated 30.6.2017 is not vacant. Obviously the petitioner could not be transferred on a nonexistent post.

In the circumstances discussed, where the application of the petitioner for voluntary retirement remains pending with the Director, Agriculture, Bihar, Patna; where the petitioner is due to retire on 31.1.2018 and above all where the post of Block Agriculture Officer against which he has been transferred vide impugned order dated 30.6.2017 is not vacant rather continues to be occupied by one Shashi Kant Sharma as admitted by the respondent in paragraph 12 of the counter affidavit with assertion that his transfer has not been made to any post, the order of transfer of the petitioner is unsustainable and is accordingly quashed and set aside.

The writ petition is allowed and the interim order passed on 24.8.2017 is hereby confirmed.

**(Jyoti Saran, J)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 12-11-2017 |
| Transmission Date | NA         |

