

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3604 of 2017

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1. Shambhu Prasad S/o Narsingh Prasad resident of Flat No. 401, A. Block, Kadambini Apartment, Riding Road, Sheikhpura, Patna presently posted as Assistant Director, Social Security and Disability Directorate, Govt. of Bihar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, New Secretariat, Patna.
3. Chief Secretary, Government of Bihar, Patna.
4. Joint Secretary, Social Welfare Department, Government of Bihar, Patna.
5. Shri Shiv Kumar Sinha, Assistant Director, Social Security and Disability Directorate, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Adv.
For the Respondent/s : Mr. Gyan Prakash Ojha- GA7
Mr. Sushant Praveen, A.C. to G.A.7
Mr. Kaushlendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-04-2017

Heard Mr. Jagannath Singh learned counsel for the petitioner and Mr. Gyan Prakash Ojha, G.A.7 for the State.

With the consent of the parties, the writ petition is being disposed of at the stage of admission itself.

The petitioner is aggrieved by the Notification bearing Memo No. 585 dated 17.2.2017 whereby he has been transferred from the post of Assistant Director, Directorate of Social Security and Disability, Social Welfare Department, Government of Bihar to the District Social Security (Cell), Munger. By the same notification, the



private respondent has been posted as Assistant Director, Directorate of Social Security and Disability, Welfare Department, Government of Bihar, Patna from the Social Security Cell, Bhojpur.

The facts are not in dispute and although the petitioner was transferred from Darbhanga to Gaya but it is on a representation made by the petitioner stating the serious illness of his wife that the petitioner was transferred from Gaya to Patna as Assistant Director, Social Security and Disability Directorate. The transfer of the petitioner to Patna is enclosed at Annexure-1 to the writ petition bearing Memo No.2739 dated 30.6.2015 and it is within 20 months that he is being posted to Munger.

Three issues were raised by Mr. Jagannath Singh to question the order of transfer impugned at Annexure-4. It is submitted that there was a purpose behind the transfer of the petitioner to Patna. In reference to the medical reports enclosed at Annexure-2 series as well as Annexure-8 to the reply to the counter affidavit, he submits that the wife of the petitioner was suffering from Kidney failure and is to undergo dialysis regularly. The reports at Annexure-8 would show that the hospital visit is almost twice a week. He submits that even when the respondents are aware of the serious ailment of the wife of the petitioner who is to undergo dialysis twice a week and even when the petitioner is yet to complete 3 years of posting at Patna yet



the transfer order has been issued.

The second issue raised by learned counsel for the petitioner is in reference to the policy decision of the Government of Bihar, a copy of which is placed at Annexure-5 to submit that it is a policy decision of the State to transfer the Government Employee as per his request in case where the Government employee concerned is in the evening of his service as well as on grounds of serious ailment suffered by any member of the family. It is submitted by Mr. Jagannath Singh that both the stipulations stands satisfied in the case of the petitioner who is due for retirement in March 2018.

The third issue raised by Mr. Jagannath Singh is in reference to the statement made by the private respondent in his counter affidavit filed in the present proceedings particularly paragraphs 7 and 10 in which the private respondent has while submitting that there are four sanctioned post of Assistant Director available in the Directorate, clearly stated that he has taken charge from Sri Kusheshwar Das and not the petitioner. Learned counsel has also referred to the resolution of the Labour Employment and Training Department at Annexure-9 and Annexure-10 which demonstrates the available strength of the Directorate at Patna to submit that conformingly there are four posts of Assistant Director which is occupied by three persons inclusive of the petitioner which is further confirmed from Annexure-11. It is thus



submitted that the stand of the respondents that any relief to the petitioner would be an obstruction to the private respondent, is not correct because as against the four sanctioned posts there are only three Assistant Directors holding the post including the petitioner thus leaving one more post available and secondly, that the private respondent has not been transferred in place of the petitioner rather he has taken charge from one Kusheshwar Das.

Practically, the issues raised by Mr. Singh as taken note of by this Court in the order recorded on 17.3.2017 and again on 27.3.2017 on merits as well as the availability of post, has gone uncontested rather the respondents while filing a supplementary counter affidavit have through Mr. Ojha learned State counsel, now tried to raise a new chapter questioning the petitioner's continuation in the backdrop of a certain complaints levelled against him. On facts there is no dispute.

Mr. Singh in response thereto has submitted that although some kind of representation was filed before the authorities way back in February, 2016 but the Department never acted pursuant thereto because no show cause or notice was ever issued by the Department to the petitioner.

I have heard learned counsel for the parties and I have perused the records.

In my opinion, the writ petition is fit to be allowed on all issues



raised by Mr. Jagannath Singh. The grounds on which the Department accepted the request of the petitioner for his transfer from Gaya to Patna vide Annexure-1, continues to subsist even today inasmuch as the wife of the petitioner still is in very serious condition and has to undergo diagnosis with the Paras HMRI Hospital at Patna about twice a week which is supported by the medical report at Annexure-2 series and Annexure-8 to the reply to the counter affidavit.

The reason thus which persuaded the Department to order for transfer of the writ petitioner to Patna continues to operate even today and thus there was no occasion for the respondents to have transferred the petitioner within 20 months of his posting and especially where he is due for retirement in March 2018. It is also very unfair on the part of the respondents to have tried to justify the transfer of the petitioner in reference to the transfer of the private respondent, which has no concern with the transfer of the petitioner. It is undisputed that the transfer of the respondent no.5 is in place of Kusheshwar Das and not in place of the petitioner as accepted by the private respondent in his counter affidavit filed in the present case more particularly paras 7 to 10, where he states that he took charge on 13.1.2017. It is thus absolutely incorrect and malafide on the part of the respondent to refer to the transfer order of the private respondent to justify the transfer of the petitioner outside Patna. Annexures- 9 to 11 of the reply to the



counter affidavit filed by the petitioner is a confirmation of the fact that there are post of Assistant Director available at Patna on which the petitioner can continue. In fact, as on 2.2.2017 only 3 posts of Assistant Director stand occupied i.e by the private respondent, Shashi Sudha Kumari and the petitioner leaving one post yet available for any other incumbent. It is again malafide on the part of the respondents to introduce the complaint when this was neither acted upon nor assigned as one of the reason for transfer of the petitioner to Patna.

When the respondents filed their counter affidavit, there was no whisper of any allegation facing the petitioner except that they tried to justify the transfer behind the transfer of the respondent No.5. It is only when this Court formulated the issues in the order in the light of the issue framed by Mr. Jagannath Singh that by way of a reply to the rejoinder, the issue of complaint has been introduced by the respondents even though as per Mr. Singh, the petitioner has never been put to notice on this charge.

The argument of Mr. Gyan Prakash Ojha that the transfer of the petitioner was on administrative grounds cannot supplement the initial stand taken by the respondents in the counter affidavit. The respondents cannot be allowed to keep shifting their stand while contesting any issue.



For the reasons aforementioned, the notification bearing Memo No. 585 dated 17.2.2017 of the State Government impugned at Annexure 4 in so far as it proceeds to transfer the petitioner to Munger, is quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.05.2017
Transmission Date	NA

