

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1350 of 2018

In

Civil Writ Jurisdiction Case No.12962 of 2018

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1. Manoj Kumar Pandey, aged about 58 years, Son of Late Rang Nath Pandey, resident of Village- Kanchanpur, P.O. and Police Station- Koransarai, District- Buxar.
 2. Siya Sharan Singh, aged about 58 years, Son of Late R.D. Singh, resident of Mohalla- Sidheshwar Nagar, Police Station- Patliputra, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar the Principal Secretary, Department of Cabinet Secretariat, Govt. of Bihar, Patna.
2. The Secretary, Animal and Fish Resources Department, Govt. of Bihar, Patna.
3. The Additional Secretary, Animal & Fish Resources Department, Govt. of Bihar, Patna.
4. The Under Secretary Fisheries (Animal and Fish) Resources Department Govt. of Bihar, Patna.
5. Shambhu Prasad Nayak Son of Sri Ram Vilash Nayak Resident of Village- Pohaddi, P.S. Bahera, District- Darbhanga, Presently Posted as District Fisheries Officer-Cum-Chief Executive Officer, Katihar.
6. Shailesh Kumar Singh Son of late Rameshwar Prasad Singh Resident of Village +P.O. Jamalpur, P.S. Kathaiya, District- Muzaffarpur, Bihar, Presently posted as District Fisheries Officer-Cum-Chief Executive Officer, East Champaran at Motihari.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sarvdeo Singh, Advocate
For the Respondent/s : Mrs. Nutan Sahay, A.C. to AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-10-2018

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 10th September, 2018 in C.W.J.C. No. 12962 of 2018, by which the learned Single Judge has dismissed the said



petition and has refused to interfere with the order of transfer passed by the appropriate authority, the original writ-petitioners have preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

2. The respective original writ-petitioners were serving as In-charge District Fisheries Officer. Along with other District Fisheries Officers, the original writ-petitioners came to be transferred. At this stage, it is required to be noted that vide notification dated 29.06.2018 in all 20 officers came to be transferred to the Inter Department. Feeling aggrieved and dissatisfied with their order of transfer, the original writ-petitioners initially made the representation, when the same came to be rejected, they approached this Court by way of C.W.J.C. No. 12962 of 2018.

2.1. It was the case on behalf of the original writ-petitioners before the learned Single Judge that they are transferred within three years and, therefore, the same is contrary to the decision of the Hon'ble Supreme Court in the case of **T.S.R. Subramanian & Ors. Vs. Union of India & Ors.**, reported in **2013 (4) PLJR 320 (SC)** as well as the circular/guidelines issued by the Government vide Memo No.



1243 dated 08.10.2014, inasmuch as there shall not be transfer of any employee unless he has completed three years of service tenure at a particular place.

2.2. However, considering the fact that their transfer orders were passed in the public interest and in the interest of administration and that no *mala fides* were alleged and having observed that transfer is an incident of service, considering various decisions of the Hon'ble Supreme Court, the learned Single Judge refused to interfere with the orders of transfer and has dismissed the writ petition. Hence, the original writ-petitioners have preferred the present Letters Patent Appeal.

3. Shri Sarvdeo Singh, learned Advocate appearing on behalf of the original writ-petitioners- appellants herein has reiterated what was submitted before the learned Single Judge and has submitted that as the respective petitioners are transferred within a period of three years from their earlier transfer/posting and they had not completed three years' tenure, the same is contrary to the decision of the Hon'ble Supreme Court in the case of **T.S.R. Subramanian & Ors.** (supra) as well as the guidelines/instructions issued by the State



Government dated 08.10.2014.

3.1. Learned counsel appearing on behalf of the State has supported the impugned order.

4. Having heard learned Advocates appearing on behalf of the respective parties and considering the impugned judgment and order passed by the learned Single Judge and even the pleadings in the petition and even the order of transfer, for the reasons stated herein below, we are of the opinion that the impugned judgment and order passed by the learned Single Judge in dismissing the writ petition is not required to be interfered with by this Court in exercise of the intra court appellate jurisdiction.

4.1. At the outset, it is required to be noted that by the notification dated 29.06.2018 for and on behalf of His Excellency the Governor of Bihar as far as 20 employees came to be transferred Inter Department. Therefore, it is not a case of singular transfer of an individual officer like the original writ-petitioners. It is a chain of transfer in the public interest and in the interest of administration. Therefore, it cannot be said that only the original writ-petitioners are selected for transfer. Even in the original writ-petition there are no specific allegations of



mala fides. As observed by the Hon'ble Supreme Court in the catena of decisions, transfer is an incident of service and in the interest of administration it is always open for the department to transfer an employee as and when required.

4.2. Now, so far the reliance placed upon the decision of the Hon'ble Supreme Court in the case of **T.S.R. Subramanian & Ors.** (supra) and the instructions/guidelines dated 08.10.2014 issued by the State Government is concerned, it is required to be noted that normally an employee shall be kept at a particular station for a period of three years. However, there is no absolute proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decision that even if there is an administrative exigency, the employee cannot be transferred within three years. Even the circular/instructions are in the form of guidelines. As observed hereinabove, by common notification as far as 20 Fisheries Officers were transferred Inter Department. Under the circumstances, the learned Single Judge has rightly not interfered with the order of transfer and has rightly dismissed the writ petition. We are in complete agreement with the view taken by the learned Single Judge.

5. In view of the above and for the reasons stated



above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

P.K.P./-

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CAV DATE	
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