

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12962 of 2018

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

... .. Petitioner/s

Versus

1. The State of Bihar the Principal Secretary, Department of Animal & Fish Resources Department, Govt. of Bihar, Patna.
2. The Secretary, Animal & 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 is 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 Petitioner/s	:	Mr. Sanjay Kumar, Adv.
For the Respondent/s	:	Mr. Asif Kalim, AC to AAG12
		Mr. Majid M. Khan, AC to AAG12
For the Interveners	:	Mr. Kumar Kaushik, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 10-09-2018

Heard learned counsel for the parties.

In this case, the petitioner is challenging the notification of advertisement contained in Memo No. 2083 dated 29.6.2018 by which the petitioner no.1 vide memo no. 1/Estb.(7)704/2018 No. 2064 has been transferred from In-charge District Fisheries Officer, Katihar to In-charge District Fisheries Officer, Arwal and



the petitioner no.2, vide memo no. 1/Estb. (7)704/2018 No. 2077, has been transferred from In-charge District Fisheries Officer, East Champaran (Motihari) to In-charge District Fisheries Officer, Bhojpur, having made a complaint that without completion of the period of three years, they have been transferred which is a gross violation of the letter of the Principal Secretary vide Memo No. 1243 dated 8.10.2014 which stipulates in normal situation, the transfer will be made after three years except for special post, the duration of stay will be two years and normally the transfer exercise should be conducted once in the month of June of every year.

The short fact of this case is that the petitioner no.1 joined as a Fisheries Inspector in the year 1994 at Deoghar, was posted at different places, was presently posted as In-charge District Fisheries Officer, Katihar. He has been working there as In-charge Fisheries Officer since 2012. The petitioner no.2 joined the services as Fisheries Inspector in the year 1992, worked at different places but, at present was posted as In-charge District Fisheries Officer, East Champaran, Motihari since July, 2002. The petitioner no.1 vide Memo No. 2045 dated 30.6.2017 was transferred from Saran, Chapra as In-charge District Fisheries Officer cum Chief Executive Officer to Katihar and the petitioner



no.2, vide Memo No. 2040 dated 30.6.2017 was transferred from Jehanabad as In-charge District Fisheries Officer cum Chief Executive Officer to East Champaran, Motihari as In-charge District Fisheries Officer cum Executive Officer. The petitioners again have been transferred vide Memo No. 2083 dated 29.6.2018 by which the petitioner no.1 has been transferred from Katihar to Arwal as In-charge District Fisheries Officer and similarly petitioner no.2 has also been transferred by the said letter from East Champaran, Motihari to Bhojpur as In-charge District Fisheries Officer which is under challenge before this Court.

Learned counsel for the petitioners in support of their argument has relied on the judgment in the case of T.S.R. Subramanian & Ors. Vs. Union of India & Ors. reported in 2013 (4) PLJR 320 (SC).

For proper exercise and its implementation of transfer, the Principal Secretary vide Memo No. 1243 dated 8.10.2014 addressed a letter to different authorities which reflects that the issue of transfer has been categories in four sub-heads dealing with the different situations for the purpose of this present case, Clause no. 4(1) being relevant is quoted herein below:-

“सरकार के सभी सेवकों का सीनान्तरण/पदस्थापन तीन वर्षों के बाद या (यदि किसी विभाग द्वारा स्थाई आदेश के जरिये किसी पद विशेष के लिए स्थानान्तरण हेतु सेवावधि दो वर्ष निर्धारित की गई हो को



छोड़ कर) उपर्युक्त दर्शाये गये सभी पहलूओं पर सम्यक विचारोपरान्त वर्ष में एकबार माह जून में ही किये जायें।”

The basic thrust of the argument has been raised by the petitioner that the transfer of the petitioners before completion of the normal tenure of three years is in complete violation of the guideline, should have been followed while exercising the jurisdiction of transfer of the petitioners as they remained posted in the earlier post even for less than 2 years but, they have been picked up and transferred on the ground of administrative exigency without disclosing therein that the nature of proper administrative exigency thereby the authority has cut short the period of stay of three years and transferred them from the previous posting, itself violates the guideline which is meant for the authority to ponder and ensure the guideline be followed religiously while passing the order with respect to the petitioners. Fundamental and basic thrust has been raised of violation in the guideline prayed interference by this Court.

No where in the petition, the petitioners have made any allegation of malafide or have pointed out the violation of the statutory provision. The interveners, who are the successors of the petitioners of the respective places, have stated that the Court should refrain from interfering with the order of transfer unless it shows to be suffering from mischief of malafide or the order has



been passed in violation of any statutory provision. The guideline is not enforceable in the court of law but, it is for the Department while passing the order of transfer, they must follow the guideline of the transfer but, violation of that guideline will not give a right to the petitioners to challenge the order of transfer before this Court.

Learned counsel for the Interveners in support of their contention has relied on the judgment in the case of B. Varadha Rao Vs. State of Karnataka & Ors. reported in (1986) 4 SCC 131, State of U.P. & Ors. Vs. Gobardhan Lal & Ors. reported in (2004) 11 SCC 402 Para-7, in the case of State of Madhya Pradesh & Ors. Vs. S.S. Kourav & Ors. reported in (1995) 3 SCC 270, in the case of Anil Kumar Prabhakar Vs. State of J & K reported in 2014 (3) JKJ 346 and in the case of Jogendra Mohanty Vs. State of Orissa & Ors. reported in 47 (1979) CLT 73 and further the interveners have submitted that it is a general chain transfer, interference of this Court will disturb the whole chain and large number of persons will be affected and, in such event, it will cause administrative disturbance in carrying out the programme of fisheries assigned by the Department.

The State has also filed counter affidavit and submitted that it was a normal transfer, not suffers from any malafide and the



order of transfer does not smack of any victimization, may be their tenure be less than three years but, on account of administrative exigency, the chain transfer has been effected to tune up the administration with a view to utilize their skill. The order of transfer neither affect the position of the petitioners nor the pay-scale has been reduced and petitioners would get the same pay-scale at the new place of posting as that of the post which they were earlier occupying.

Before deciding the issue which has been raised in the present case, judgments of the Hon'ble Apex Court as well as High Court will give the glimpse with respect to in what circumstances the Court should exercise judicial review and interfere with the administrative action in relation to transfer.

Transfer is the incident of service. In normal circumstances, the Court should not interfere with the order passed in connection with transfer matter unless the transfer order is actuated by a malafide or violates the statutory provision. The administrative guideline prescribed for regulating the transfer or effectuating transfer policy at best may afford an opportunity to the officer or servant concerned to approach their higher authority for redressal of the grievance but, cannot have the consequence of depriving or denying the competent authority to transfer a



particular officer/servant to any place in public interest and is found necessitated by exigency of service as long as the official status is not adversely affected and there is no infraction of any career prospect such as seniority, scale of pay and secured emoluments. The order of transfer made even in transgression of administrative guideline cannot be interfered with, as they do not confer any legally enforceable rights, unless, it is shown to be vitiated by mala fides or is made in violation of any statutory provision.

In nutshell, the guidelines which are prescribed is for consumption of the Department while exercising the power to transfer an employee. It has to be kept in mind that the fairness should be maintained and it is to be in the interest of administration. Even if there is some infraction can only give a liberty to the employee to point out the competent person drawing the attention towards the manner he has been treated but, as such, the Court cannot interfere with the order of transfer. In the case of B. Varadha Rao (supra), there, the Court has also observed in the similar manner and gave guideline and determined its ambit for interference in the order of transfer, the Court has also stated that in normal circumstances, the Court should not interfere unless the power of transfer is abused or has been done in a colorable



exercise of power actuated with mala fide or in infraction of the statutory provision but, it is to be kept in mind that unscheduled transfer causes irreparable harm to the government servant and his family as it disrupts the education of his children, leads to enormous other complications and problems results in hardship and demoralization. The relevant portion of the aforesaid judgment reads as follows:-

“The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants.

5. It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated. But it is one thing to say that an order of transfer which is not made in public interest but for collateral purposes and with oblique motives is vitiated by abuse of powers, and an altogether different thing to say that such an order per se made in the exigencies of service varies any condition of service, express or implied to the disadvantage of the concerned Government servant. The petitioner who appeared in person placed reliance, as he did in the High Court, on the decision of the Bombay High Court in Seshrao Nagorao Umap v. State of Maharashtra and Ors. (1985)2 LLJ 73. We do not see how the decision can be of any avail to the question at issue. The learned Judges were dealing with a petition under Article 226 of the Constitution by which a Medical Officer challenged his order of transfer on the ground that it was not only mala fide but was issued in colourable exercise of power and therefore wholly illegal and void. It was contended by the



petitioner that he was being transferred contrary to the Government policy with a view to accommodate one Dr. Section 4P. Patil because of the political influence he wielded. In allowing the writ petition, the learned Judges observed that it was no doubt true that the Government has power to transfer its employees employed in a transferable post but this power has to be exercised bona fide to meet the exigencies of the administration. If the power is exercised mala fide, then obviously the order of transfer is liable to be struck down. They relied on the observations made by this Court in E.P. Royappa v. State of Tamil Nadu and Anr. for the positivistic view that 'equality is antithetic to arbitrariness' and held that the observations equally apply to the policy regarding the transfer of public servants. It was observed :

It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such ; transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.



The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government servant, any of his conditions of service making the impugned order appealable under Rule 19(1)(a) of the Rules.

6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer.”

In the Gobardhan Lal (supra) case also, similar principle has been enunciated in paragraph no.7 and it is not required to repeat the same principle as has been stated herein above. It is



better to quote paragraph no.7 of the aforesaid judgment which reads as follows:-

7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed



supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

This Court does not deal with the judgments that have been cited by the Intervener but it will be relevant to consider the judgment that has been cited by the petitioners. In the case of T.R.S. Subramanian (*supra*), the Court was considering the policy with respect to different subject matter of transfer and posting. As the group of eminent retired civil servants highlighted the necessity of various reforms for preservation of integrity, fearlessness and independence of civil servants. In the backdrop of this consideration, several recommendations given by the different committees were taken into consideration and the Court was of the view that there should be fixed tenure of posting of an employee so that they may work with integrity, fearlessness and independence and the Court has taken note that the manner with quick frequency the officers are transferred sometime actuated with mala fide in order to adjust certain blue eyes officers or to transfer the person in order to victimize and the Court has said that there should be fixed tenure of posting so that the officer can achieve the professional target and it will help them to function as effective instrument to execute the public policy. Frequent transfer is deleterious to the good governance. Minimum assured service tenure enhance the functioning of the administrative machinery. It



will be relevant to quote paragraph nos. 30 and 31 of the aforesaid judgment which reads as follows:-

“30. We notice, at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. The necessity of minimum tenure has been endorsed and implemented by the Union Government. In fact, we notice, almost 13 States have accepted the necessity of a minimum tenure for civil servants. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. Repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of the society.

31. We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months.”

Learned counsel for the petitioners submits that the letter which has been addressed should be treated to be mandatory in nature and, in no circumstances, there should be a violation of the guideline, otherwise, it will disturb the normal period of posting of the officer concerned. He has pointed out that in a very short period, both the petitioners have been transferred but, in the



entire writ application, except the stipulation of fixed tenure of three years, nothing has been brought to suggest or reflects that the order of transfer has been passed in violation of the statutory provision or decision taken with malicious mind or in order to give an undue benefit to certain officers rather it is a chain transfer though the period is less than three years but, if the transfer has been made to improve the efficiency of the administration, may be erosion of fixed period of posting, will not entitle the petitioners to make a prayer for interference with the order of transfer, inasmuch as, interference would disturb the chain, ultimately would effect the administrative set up.

Hence, this Court would not like to interfere in the order of transfer as this Court does not find any merit in this case.

With the aforementioned observation, this writ application is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2018
Transmission Date	

