

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3228 of 2019

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Rajendra Kumar S/O- Late Ram Janam Singh R/o- Village- Harpura, P.O- Mahamadpur, P.S.- Bikram, Dist-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Food and Civil Supply Department, Government of Bihar, Patna
3. The Joint Secretary Food and Supply Department, Government of Bihar, Patna
4. The District Magistrate, Purnea Purnea
5. The District Supply Officer, Purnea Purnea
6. The Sub- Divisional Officer, Banmankhi, Purnea
7. Sri Krishna Kumar Rishi, R/o- Rashra, P.O- Harimurha, P.S- Banmankhi, Dist- Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Singh, Advocate Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s	:	Mr. Arvind Ujjwal (SC4) Mr. Upendra Prasad Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 17-06-2019

1. Rejoinder to the counter affidavit has been filed during the course of arguments. Let it be taken on record.

2. Heard Mr. Sunil Kumar Singh, learned counsel for the petitioner and Mr. Upendra Pratap Singh, learned AC to SC-4.

3. The petitioner, who is a Block Supply Officer, has challenged the order of his transfer from Banmankhi Block in



the district of Purnea to Kumarkhand in the district of Madhepura within a short span of six months.

4. The main ground of challenge heitherto has been the petitioner being on the wrong side of local MLA who is also a Cabinet Minister in the Government of Bihar. However, in the entire petition, no details have been provided with respect to such malafides as has been alleged in the writ petition. However, certain facts came to the fore when some probe was made with respect to the action of the petitioner immediately preceding the impugned order of transfer.

5. Initially, the response of Respondent No. 6, the SDO of the concerned Sub-division, was that the transfer order was on administrative grounds and since the decision had been taken by the department, the SDO had no role to play in the aforesaid order of transfer.

6. This Court did not accept such affidavit which primarily gave an impression that there was a mechanical rebuttal of the averments made in the writ petition. It goes without saying that SDO of a Sub-division has no authority or power to transfer a Block Supply Officer from one block to



another block in a different district. Mere reiteration of such lack of competence and power did not satisfy the Court in the first instance and, therefore, the counter affidavit filed on behalf of Respondent No. 6 was rejected with a direction to file a fresh affidavit, addressing the charges levelled in the writ petition.

7. The fresh counter affidavit on behalf of Respondent No. 6 itemizes some of the grounds which may have played into the decision making of the department in transferring the petitioner from one Block to another, though in a different district.

8. An enquiry, perhaps, was entrusted to the petitioner with respect to the functioning of a PDS dealer in the Block. The petitioner is alleged to have detached the membership of some of the consumers who had complained against such PDS dealer. The Respondent No. 6 was of the view that instead of submitting a report regarding the veracity of the complaint, the Block Supply Officer, of his own, and without informing the Sub-divisional Officer, detached the



membership of such complaining consumers and attached their membership with another PDS dealer.

9. Though this could not have been a ground for transferring the petitioner from one Block to another, nonetheless, the aforesaid fact has been brought to the fore only in the aid of the State in rejection of the claim of the petitioner that the petitioner was transferred on malafides and at the instance of the local MLA.

10. Rightly, the counter affidavit does not advert to the aforesaid issue because of the absence of any positive indicator of any malafides. But what has caught the attention of the Court is that in the supplementary counter affidavit as well as rejoinder to the counter affidavit, the petitioner has brought on record the fact that the Mukhiya of a Panchayat had actually been wrongly entrusted with the PDS dealership and when this fact was noticed and protested against by the petitioner, he was orally advised not to cleave to the issue because of the association of the aforesaid dealer with the local political leaders. However, for this statement also, no proof or definite material has been placed on record.



11. In any view of the matter, since the petitioner is about to retire within one year, he does not wish to pursue his matter on the ground of the transfer being contaminated by malafides. What he now prays for is that he be considered for being posted near his home-town, for the date of his retirement being within one year and for which a provision has been made by a government resolution indicating the general policy regarding transfer and posting. As a matter of giving consideration to the service conditions of the employees, the government has resolved that in the last year of service, as far as possible, a government servant's request for being transferred and posting at the place of his choice should be considered preferably (Refer to CS No. 3 / NE-1016/80-3918, dated 25.10.1980, issued by the Department of Cabinet Secretariat and Coordination).

12. Under the aforesaid facts and circumstances, namely the petitioner not pursuing the aforesaid petition and only seeking a consideration of his request for being transferred near his home-town, as his retirement is round the corner, this Court directs the petitioner to make a



representation indicating his date of retirement and his request for being posted near his home-town, before the Principal Secretary, Department of Food and Civil Supply, Government of Bihar, Patna within a period of four weeks from today. Should such a representation be filed, the concerned respondent (Respondent No. 2), shall look into the matter and shall pass orders in accordance with law, keeping in view the resolution of the government regarding acceptance of the request of an employee in the last year of his service with respect to his posting near his home-town. Such order, needless to say, shall be passed within a period of four weeks of the receipt of such request by the petitioner as directed by this Court.

13. With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	19.06.2019
Transmission Date	

