

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12959 of 2017

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Prem Prakash, Son of Late Jay Narayan Jha, Resident of Village- Bhattawalia,
P.S.- Sangrampur, Dist.- East Champaran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Dept., Visveshvaraiya Bhavan, Bailey Road, Patna.
2. Engineer-in-Chief-cum-Special Secretary, Bihar, Patna.
3. Chief Engineer (M), P.H.E.D., Govt. of Bihar, Patna.
4. Chief Engineer, Muzaffarpur Region, PHED, Muzaffarpur.
5. Superintending Engineer, PHED, PH Circle, Motihari.
6. Executive Engineer, Bettiah Division, Bettiah.
7. Sunil Kumar Singh, son of name not known to the petitioner, Correspondence Clerk, PH Division, Bettia.

... .. Respondent/s

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Appearance :

For the Petitioner/s : None.
For the State : Mr. Upendra Pratap Singh, A.C. to S.C. -4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-11-2019

None appears on behalf of the petitioner. Learned counsel for the State is present.

2. The petitioner has put to challenge an order dated 22.08.2017 passed by the Superintending Engineer, PH Circle, Motihari, in pursuance of an order of this Court dated 08.08.2017 passed in CWJC No. 9224 of 2017 whereby he has upheld petitioner's transfer vide order dated 30.06.2017 from PH Division, Bettiah, to PH Division, Dhaka, on the post of Accounts Clerk. The petitioner is seeking quashing of the said order dated



30.06.2017 issued by respondent No. 5 also, to the extent the same relates to the petitioner with a direction to the Respondents to allow him to work on the post of Accounts Clerk at PH Division, Bettiah, as per the Rules and the procedure so determined by the Department.

3. If what has been narrated in the writ petition is to be accepted and the grounds taken by the petitioner is to be approved by this Court, the petitioner cannot be transferred to any place other than Bettiah as can be noticed from the interim order of this Court dated 09.11.2017 which reads thus:

“Heard Mr. Yashraj Bardhan, learned counsel appearing for the petitioner and Mr. Upendra Pratap Singh, learned Assisting Counsel to Standing Counsel No.4 for the State.

This is second round litigation for the petitioner to question his transfer order bearing Memo No.313 dated 30.6.2017, whereby he has been transferred from the post of Accounts Clerk from Public Health Division, Bettiah to Public Health Division, Dhaka. It is questioning this order that the petitioner came before this Court in CWJC No. 9224 of 2017 to submit that in terms of the advisory of the Public Health Engineering Department dated 13.6.2017, a copy of which



is enclosed at Annexure-1 to the present writ petition, the Government Servant concerned cannot be posted in the Work Division where he had earlier served.

According to the learned counsel for the petitioner, prior to his posting in the Public Health Work Division, Bettiah he had served in Public Health Division, Dhaka from 1.11.2008 to 17.9.2014 whereafter he was transferred to Public Health Division, Bettiah, and thus he cannot be transferred back to Public Health Division, Dhaka as per the stipulation present at paragraph 3 of the advisory dated 13.6.2017. It is taking note of the submission that the said writ petition was disposed of by this Court with a direction to the Superintending Engineering Circle concerned to consider the matter and pass appropriate order.

It is following the remand by this Court that the Superintending Engineer, Public Health Engineer Circle, Motihari vide order bearing Memo No.431 dated 22.8.2017 has upheld the transfer order of the petitioner relying upon paragraph 2 of the advisory dated 13.6.2017 which, inter alia, provides that the Government servant concerned cannot be posted in his home district during his service unless he is due for retirement within one year of the transfer.



According to the Superintending Engineer, Public Health Engineering Circle, Motihari since the petitioner is a resident of Sangrampur block which falls under the Motihari Works Division hence in view of the stipulations present at paragraph 2 he cannot be posted in the Public Health Division, Motihari.

The argument advanced by Mr. Bardhan, learned counsel appearing for the petitioner is that for the reasons assigned by the Superintending Engineer, Public Health Engineering Circle, Motihari not to post the petitioner to Motihari Work Division, the petitioner also cannot be posted at Public Health Division, Dhaka because the said Division also falls in the home district of the petitioner. According to Mr. Bardhan, if the stipulation present at paragraph 2 of the advisory of the Public Health Engineering Department dated 13.6.2017 is strictly applied then except for the Public Health Division, Bettiah the petitioner cannot be posted either at the Public Health Division, Motihari or at Public Health Division, Dhaka because both fall in his home district. The submissions advanced by Mr. Bardhan merits consideration and requires an answer not only from the Superintending Engineer concerned but also the Secretary, Public Health Engineering



Department under whose guidance the advisory has been issued.

Let a comprehensive counter affidavit be filed by the Principal Secretary, Public Health Engineering Department, respondent no.1 as well as the Superintending Engineer, Public Health Engineering Circle, Motihari, the respondent no.5 within three weeks from today and until further orders of this Court the order of transfer of the petitioner bearing Memo No.313 dated 30.6.2017 impugned at Annexure2 in so far as it relates to the petitioner together with the order of the Superintending Engineer bearing Memo No.432 dated 22.8.2017 impugned at Annexure-6 shall remain stayed.

Put up this matter under the same heading on 30th of November, 2017”.

(Underlining for emphasis)

4. In compliance of the said order dated 09.11.2017, a counter affidavit has been filed on behalf of the State Respondents, stating therein that the petitioner is in the cadre of Public Health Engineering Circle and, therefore, he can be transferred within the Motihari Circle of PHE only, which has jurisdiction over two districts viz. East Champaran and West Champaran. He can however, be posted outside, but in accordance with Rule, 14 of the



Bihar Public Health Engineering Circle Level Accounts Clerical Cadre (Recruitment & Service Conditions) Rules, 2014, which clearly says that the cadre shall be at Circle level but in case of certain exigencies lie, including shortage of Accounts Clerk, in a Circle, the Zonal Chief Engineer, PHED, shall have the powers to transfer an employee of Circle from one cadre to another under his jurisdiction, maintaining his seniority, on the basis of his entry into service. The Engineer in Chief cum Special Secretary, Public Health Engineering Department has been authorized to order State level transfer in special circumstances. The said Rules have been brought on record by way of Annexure-B to the counter affidavit. It has further been stated that the petitioner is working under PHED Circle cadre Motihari and, therefore, he can be transferred within the said Circle. The home District of the petitioner is within the said Circle. It has been stated in the counter affidavit that normally the posting of Accounts Clerk or any Group 'C' employees is to be avoided in the home District.

5. Reliance has been placed on a Supreme Court decision in case of *Rajendra Singh Vrs. State of U.P. (Civil Appeal No. 4976 of 2009) and Civil Appeal No. 4975 of 2009*), in the counter affidavit to establish a case on behalf of the State of Bihar that transfer of an employee is not only an incidence



inherent in terms of appointment, but also implicit in the absence of any specific indication to the contrary.

6. A reply to the counter affidavit has been filed on behalf of the petitioner and heavy reliance has been placed on the Advisory dated 13.06.2017, which has been mentioned in the interim order dated 09.11.2017 and it has been contended that the respondents have not dealt with the issue that the petitioner can be posted at PH Division, Bettiah, only.

7. It is evident from the materials on record and the grounds which have been taken that there has been no violation of any statutory provision while transferring the petitioner with issuance of memo No. 313 dated 30.06.2017 from Bettiah to Dhaka. Deviation from the guidelines which are directory and are normally to be followed by the State Respondents, cannot constitute, a valid ground for interference by this Court with such orders, unless it is found to have been passed *mala fide* and beyond jurisdiction. The Advisory, much reliance on which, has been placed by the petitioner can, at the maximum, be treated to be a guideline of general nature. In the present case, the petitioner is resident of the District of Motihari. He is presently working at Bettiah. He was earlier working at Dhaka in the District of Motihari from where he was transferred to Bettiah. Both, Bettiah



and Dhaka, fall under the same PHED Circle, Motihari. The reason why the petitioner is resisting so much in his transfer from Bettiah to Dhaka and claiming that he should be allowed to remain at Bettiah only raises a suspicion whether the petitioner has developed any vested interest at Bettiah. By virtue of interim order dated 09.11.2017, the petitioner has already remained at Bettiah for considerable period of time. Further, no case of *mala fide* has either been pleaded or proved.

8. I find force in the plea taken on behalf of the Respondent-State of Bihar, relying on Supreme Court's decision in case of ***Rajendra Singh Vrs. State of U.P. (Civil Appeal No. 4976 of 2009) and Civil Appeal No. 4975 of 2009***, that transfer is an incidence of service and it is within the discretion to be reasonably exercised by the competent authority to transfer and post a Government servant, according to administrative exigencies. If the respondents have considered it fit to post the petitioner to a place, which is located within his home District and within the circle cadre of the petitioner, the petitioner cannot resist such transfer or posting. There is no vested right in the petitioner to continue at Bettiah. There is absence, in my view, of any strong compelling reason based on which the impugned transfer can be rendered unjustified or improper and thereby requiring this Court's



interference, in exercise of power of judicial review under Article 226 of the Constitution.

9. This writ petition has no merit at all and is, accordingly, dismissed.

10. Interim order stands vacated, as a consequence thereof.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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