

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9631 of 2018

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Shashi Shekhar, S/o Surendra Nath Verma, Divisional Forest Officer,
Samastipur Forest Division, Samastipur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Joint Secretary to the Government, Paryawaran Ewam Van Bibhag,
Government of Bihar, Patna.
3. Sudhir Kumar, Indian Forest Officer, Forest Division, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. M. P. Dixit, Advocate Mr. S. K. Dixit, Advocate Mr. Sanjay Kumar, Advocate Ms. Swastika, Advocate Mr. Shailendra Kumar, Advocate Mr. Rajeev Kumar Singh Advocate
For the Respondent/s	:	Mr. Awanish Nandan Sinha, GP21 Mr. Ashok Kumar Pathak, AC to GP-21

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 16-05-2019

1. A supplementary affidavit has been filed during the
course of arguments. Let it be taken on record.

2. Heard the learned counsel for the petitioner and
the State.

3. The petitioner has challenged the order dated
27.04.2018 contained in notification no. 1205 issued under the
signature of the Joint Secretary to the Government,



Department of Forests and Environment, Government of Bihar, Patna, whereby the petitioner has been transferred from Samastipur where he had been working as DFO to the Chief Conservator of Forests, Patna. The aforesaid notification of transfer has been challenged on the ground that such transfer order is vindictive and punitive.

4. It has further been stated that the order impugned has been passed on the complaint of a NGO against whom the petitioner in the past had taken action in the capacity of DFO, Samastipur.

5. The other ground of challenge is that only after one year of posting of the petitioner at Samastipur in his capacity as DFO, he has been transferred which is against the general transfer policy of the Government of allowing any person to remain at the place of posting for three years and transfer be effected only twice a year in May to June and November to December.

6. On 18.05.2018, when this petition was heard for the first time, counter affidavit was directed to be filed. While giving the aforesaid direction, this Court vide order dated



18.05.2018, referred to above, indicated that there shall be *status quo* as on date till the next date of hearing.

7. During the pendency of the writ petition, the petitioner brought on record certain documents indicating that notwithstanding the order of *status quo* as on 18.05.2018, the Respondent No. 3 was posted in his place and was made to self-assume the charge. It is thus asserted by the learned counsel for the petitioner that not only the Respondent No. 3 but the other respondents also have committed contempt of the order of this Court in not allowing the petitioner to continue at the place of posting till the final adjudication of the writ petition.

8. It is further brought to the notice of this Court by the learned counsel for the petitioner that the office of the petitioner was locked and salary to him was also stopped. All these orders have been challenged in the present writ petition by filing various Interlocutory Applications.

9. The counter affidavit on behalf of Respondent Nos. 1 and 2 indicates and confirms that there had been a complaint against the petitioner by one Adarsh Viklang Seva Sansthan,



Samastipur, which was inquired into and the allegations levelled in the complaint were found to be correct. Nonetheless, the order of transfer was sought to be defended as not having been passed on the ground of any complaint made by the aforesaid NGO but only in the interest of good administration. The order has further been orally sought to be defended on the ground that the petitioner was not thrown to any far-flung place but only in the office of the Chief Conservator of Forests, Patna.

10. With respect to the argument of Mr. Dixit that a person cannot be transferred before expiry of the tenure of three years normally, it has been submitted by the learned counsel for the State that such general policy of transfer and posting is also subject to the proviso that in any special circumstance/situation, such general direction may be waived.

11. The order impugned also does not state any such reason and it only appears to be an order in the administrative exigency.

12. Regarding reference of the complaint by the NGO, learned counsel for the State has reiterated that it is only



in response to the allegation made by the petitioner that his transfer is punitive, that a reference, en-passant, has been made about such complaint. The transfer order certainly is not a sequel to the inquiry report which has been submitted against such complaint to the concerned respondents.

13. With regard to the issue of transfer being punitive / vindictive and an attempt to over-reach the orders of this Court, the learned counsel for the State has further drawn the attention of this Court to the supplementary counter affidavit which indicates that much prior to 18.05.2018, the date on which the status quo order (as on date) was passed, the Respondent No. 3 stood transferred to Samastipur with additional charge of DFO, Samastipur. Close to the heels of the aforesaid order, another office order was passed asking the Respondent No. 3 to self-assume the charge. In that context and with the aforesaid facts in support of the contention, it is urged on behalf of the State that the allegation of breach of the orders of this Court is devoid of any substance.

14. Mr. M. P. Dixit, learned Advocate for the petitioner, however, on the other hand has said that once



reference to the complaint and the enquiry thereto has been taken in the counter affidavit, it presupposes that the order of transfer is punitive, which is not permissible in the eyes of law. He further submits that if the veil from the innocuous wordings of the order of transfer is lifted, the punitive nature of transfer would be laid bare in no time.

15. This Court on going through the records of the case finds that though the order of transfer of the petitioner has been passed within a short span of time that the petitioner had joined the post as DFO, Samastipur, but apparently there was nothing to indicate that it was a punitive transfer. The reason for the Court to come to this conclusion is the place of transfer viz the office of the Chief Conservator of Forests, Patna.

16. An employer is the best judge to assess the capabilities and the requirement of deploying the employees at a particular place. In the absence of anything to indicate that the order of transfer is punitive or stigmatic, no interference is required to be made by any Court.



17. The petitioner ought to join the place of his posting within a period of one week from the date of passing of the order.

18. However, there being great force in the submission of Mr. Dixit, learned Advocate that only because of the order dated 18.05.2018 of status quo and the intention of the petitioner to abide in letter and spirit the directives given on 18.05.2018 by this Court that the petitioner did not join at his transferred place of posting. It cannot be termed as abdication of duty or desertion of service requirement of joining the place of posting. In the interregnum, therefore, the petitioner cannot be stated to be out of work and be denied the salary which is due to him.

19. Since the petition remained pending and that because of the order of status quo, no charge had been given by the petitioner to the next incumbent, it would be difficult to accept/countenance the position that the petitioner had not worked for the aforesaid period. The act of Court, traditionally, is said to injure no one.



20. This Court, therefore, directs the respondents to pay to the petitioner his salary.

21. It would also be open for the petitioner, but only after his joining at the new place of posting, to ventilate his grievance before the Chief Conservator of Forests, Government of Bihar, Patna within a period of four weeks of his joining of new place of posting and seek a reconsideration of the order of transfer, who, on receipt of the same, shall consider it dispassionately / objectively and shall pass a reasoned order disposing off such representation within a further period of six weeks thereafter.

22. With the aforesaid observation / direction, this petition as well as the Interlocutory Applications stand disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	18.05.2019
Transmission Date	

