

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1394 of 2020

Purushottam Singh Son of Baikunth Singh Resident of Cant Road Khagaul,
behind Bank of India, P.O. and P.S.- Khagaul, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Environment, Forest and Climate Change, Govt. of Bihar, Sichai Bhawan, Patna- 800015.
2. The Principal Chief Conservator of Forest, Department of Environment, Forest and Climate Change, Govt. of Bihar, Sichai Bhawan, Patna- 800015.
3. The Divisional Forest Officer, Patna.
4. The Divisional Forest Officer, Bhojpur at Ara.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar
For the Respondent/s : Mr. Raghwanand (GA-11)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 22-06-2020

The present writ petition has been filed seeking the following reliefs:-

“A. For issuance of writ in nature of mandamus to set aside the order dated 10.12.2019 contained in Memo No. 3318 passed by the Principal Chief Conservator of Forest, Department of Environment, Forest & Climate Change, Govt. of Bihar, Patna (respondent no. 2) whereby and whereunder the respondent authority mechanically in complete violation of settled principle of law with respect to transfer & posting of Govt. servant, within very short span of two and half months of posting at Bhojpur Forest Division at Ara, malafidely again passed order of transfer to petitioner from Bhojpur Forest Division at Ara to Patna Forest Division at Patna.

B. For direction to stay Letter No. 2568 dated 23.12.2019 till the disposal of present writ petition, issued by the Divisional Forest Officer, Bhojpur at Ara



whereby petitioner is released from Bhojpur Forest Division at Ara and directed to join at office of Patna Forest Division at Patna. ”

The brief facts of the case, according to the petitioner, are that the petitioner is a government servant, holding the post of Regional Forest Officer under the Department of Environment, Forest & Climate Change, Government of Bihar and was posted at Ara Forest Range under Forest Division at Ara where he was working satisfactorily to the appreciation of all concerned including the higher officials. It is the case of the petitioner that the petitioner has been transferred frequently without any rhyme or reason against the guidelines of the State Government, causing great distress and torture to the petitioner herein.

It is submitted that the petitioner was transferred from Hisua Forest Range under Nawada Forest Division, Nawada to Ara Forest Range under Bhojpur Forest Division at Ara by an order dated 27.05.2015 vide Memo No. 302/01-151 passed by the Principal Chief Conservator of Forest, Department of Environment, Forest & Climate Change, Govt. of Bihar, Patna (respondent no. 2). It is further stated that without completing minimum statutory term of tenure i.e. within one and half year, the petitioner was again transferred by the respondent no. 2 by an order dated 02.01.2017 vide Memo No. 303/2016-09 from Ara Forest Range under Bhojpur Forest Division at Ara to Patna



Forest Division at Patna. It is further stated that after passing of transfer order dated 02.01.2017, vide Memo No. 303/2016-09 (Annexure-1), the petitioner was not able to join at his new posting on account of him being in judicial custody in connection with some family dispute and after coming out from judicial custody on 13.12.2018, the petitioner was not released by the concerned authority so as to enable him to join at his new posting i.e. at the Patna Forest Division at Patna, as such he was compelled to remain at Ara Forest Range under Bhojpur Forest Division, Ara. Subsequently, after a long time, the respondent authority directed the Divisional Forest Officer, Bhojpur, Ara to release the petitioner to enable him to join the new posting at Patna Forest Division, Patna. In view of the aforesaid direction, the petitioner was released from Bhojpur Forest Division, Ara whereafter, the petitioner submitted his joining at Patna Forest Division, Patna but the respondent authority did not accept the joining of petitioner in view of Letter No. 2212 dated 27.08.2019 whereby and whereunder the Principal Chief Conservator of Forest, Department of Environment, Forest & Climate Change, Govt. of Bihar (respondent no. 2) had imposed stay on all earlier transfer and postings. The petitioner is stated to have then submitted an application on 14.09.2019, addressed to the Divisional Forest Officer, Bhojpur, Ara wherein he stated that his joining has not



been accepted at Patna Forest Division, Patna in view of Letter No. 2212 dated 27.08.2019 issued by the Principal Chief Conservator of Forest, Department of Environment, Forest & Climate Change, Govt. of Bihar (respondent no. 2). In view of non-joining of petitioner at Patna Forest Division, Patna, as stated above, the Divisional Forest Officer, Bhojpur, Ara vide Letter No. 1986 dated 23.09.2019, addressed to the Principal Chief Conservator of Forest, Department of Environment, Forest & Climate Change, Govt. of Bihar (respondent no. 2), made a request for continuation of petitioner on a vacant post at Ara Forest Range under Bhojpur Forest Division, Ara. The Principal Chief Conservator of Forest, Department of Environment, Forest & Climate Change, Govt. of Bihar (respondent no. 2), in view of recommendation of the Divisional Forest Officer, Bhojpur, Ara, had then passed an order dated 28.09.2019 vide Memo No. 2556 whereby and whereunder the petitioner was directed to remain posted at Ara Forest Range under Bhojpur Forest Division, Ara. Nonetheless, the Principal Chief Conservator of Forest, (respondent no. 2), within a very short span of two and half months of his previous order again passed an order dated 10.12.2019, contained in Memo No. 3318, whereby and whereunder the respondent authority, mechanically and in complete violation of the settled principles of law with respect to



transfer & posting of Govt. servant as also without completion of the minimum tenure of posting at Bhojpur Forest Division at Ara, malafidely again passed an order of transfer of the petitioner from Bhojpur Forest Division at Ara to Patna Forest Division at Patna.

The petitioner had then filed a representation dated 11.12.2019, addressed to the Principal Chief Conservator of Forest (respondent no. 2), wherein a prayer was made for stay of his transfer. The Divisional Forest Officer, Bhojpur at Ara had then issued Letter No. 2568 dated 23.12.2019 whereby the petitioner was released from Bhojpur Forest Division at Ara and directed to join at the office of Patna Forest Division at Patna.

It is thus submitted by the learned counsel for the petitioner that the petitioner has been victim of several premature transfers and postings on account of political pressure and apathy of the respondent authorities. The learned counsel for the petitioner has referred to the guidelines issued by the Central Secretariat Department contained in Letter No. 881 dated 03.06.2009 and has relied on paragraph no. 2 thereof to submit that ordinarily transfer and posting has to be made once in a year in the month of June and the transfer should be made only after completion of three years of service at that particular place. It is thus the submission of the learned counsel for the petitioner that the respondents have violated the guidelines and the resolution of



the State Government inasmuch as on several occasions, the petitioner has been transferred from one place to another within a short span of time i.e. before completion of three years service at a particular posting. In such view of the matter, it is submitted that the order dated 10.12.2019 passed by the Principal Chief Conservator of Forest, Bihar, Patna and the order dated 23.12.2019 passed by the Forest Divisional Officer, Bhojpur Forest Division, Ara are fit to be quashed. At this juncture, the learned counsel for the petitioner has submitted that the petitioner, being an obedient government servant has already submitted his joining at the office of Patna Forest Division at Patna on 07.01.2020, which has also been accepted by the authorities.

Per contra, the learned counsel for the respondents, by referring to the counter affidavit filed on behalf of the respondent nos. 2 & 4, has submitted that the petitioner was taken into custody on 06.02.2017 in a criminal case instituted against him and was put under suspension vide office order dated 29.03.2017 issued by the Principal Chief Conservator of Forest, Bihar. After release from custody, the petitioner submitted his joining on 13.12.2018 before the Divisional Forest Officer, Bhojpur Forest Division, whereupon his suspension was revoked by an order dated 17.01.2019 passed by the Principal Chief Conservator of Forest, Bihar and he was posted under the Working Plan Division



at Patna. Subsequently, the Divisional Forest Officer, Bhojpur Forest Division by letter dated 23.09.2019 informed that joining of the petitioner was not accepted by the Working Plan Officer, Patna, hence sought appropriate directions. In such view of the matter, vide letter dated 28.09.2019, the Principal Chief Conservator of Forest, Bihar granted approval to the proposal of posting of the petitioner under Bhojpur Forest Division, however, no orders were issued for the posting of the petitioner under the Bhojpur Forest Division. The matter was again considered and then the Principal Chief Conservator of Forest, Bihar by letter dated 15.11.2019 sent a proposal to the State Government for posting the petitioner under Working Plan Division, which was approved by the State Government vide letter dated 09.12.2019 of the Environment Forest & Climate Change Department, Government of Bihar, Patna. Thereafter, the petitioner was posted under the Working Plan Division vide order dated 10.12.2019, issued by the Principal Chief Conservator of Forest, Patna. It is further submitted that the claim of the petitioner that he has been transferred within a short period of two and half months from Bhojpur Forest Division to Patna is not correct inasmuch as the petitioner was posted under Bhojpur Forest Division by an order dated 27.05.2015 whereafter he was posted under Plan Division by an order dated 02.02.2017 and after his suspension was revoked,



he was again posed under Working Plan Division vide order dated 17.01.2019 and finally he has been posted under the Working Plan Division by the impugned order dated 10.12.2019, after obtaining the approval of the State Government. The learned counsel for the respondent State has further submitted that in public and administrative interest a person can be transferred and posted to another place in a short span and it is not mandatory that each and every government servant is to be transferred only after completion of three years of his posting. It is also submitted that after the petitioner was taken into custody on 06.02.2017, he was suspended whereafter upon release from custody his suspension was revoked by an order dated 17.01.2019 and as per the transfer order dated 02.02.2017, he should have submitted his joining at Working Plan Division at Patna but instead he submitted his joining at Bhojpur Forest Division which created the entire confusion, nonetheless, the respondents took a lenient view of the matter since the petitioner was without any posting and as a stop gap measure, he was accommodated at Ara Forest Range, however, ultimately, approval was granted by the State Government to post him at the Working Plan Division, Patna and accordingly, the formal order dated 10.12.2019 was issued. Thus, in nutshell the submission of the learned counsel for the respondent is that the posting of the petitioner at Bhojpur Forest



Division was without the approval of the State Government and was only by way of stop gap arrangement. The learned counsel for the respondent has further submitted that as far as the issue of earlier frequent transfer of the petitioner is concerned, the petitioner had approached this Court by filing a writ petition bearing CWJC No. 8338 of 2015, however, subsequently the petitioner had withdrawn the same and the writ application was dismissed as not pressed by an order dated 03.08.2015 passed by a coordinate Bench of this Court.

I have heard the learned counsel for the parties and perused the materials on record. It is apparent from the record that the entire dispute/problem arose in the present case after the petitioner was taken into judicial custody on account of some criminal case and he was suspended by the respondents. In nutshell, after the petitioner was transferred from Nawada Forest Division, Nawada to Ara Forest Range under the Bhojpur Forest Division at Ara by an order dated 27.05.2015, he was again transferred by an order dated 02.01.2017 from Ara Forest Range under Bhojpur Forest Division at Ara to Patna Forest Division at Patna. In the meantime, the petitioner was taken into custody on 06.02.2017 in connection with one criminal case, hence apparently he could not join at Patna and in fact he was also suspended by the respondent by an order dated 27.03.2017. Nonetheless, after he



was released from custody, his suspension was revoked on 17.01.2019 and instead of submitting his joining at Patna, he submitted his joining at Ara on the pretext that he was not released by the Ara authorities to enable him to join at Patna Forest Division at Patna. However, subsequently, he was released from Bhojpur Forest Division, Ara and had submitted his joining at Patna but in the meantime, the Principal Chief Conservator of Forest, Bihar vide a general order dated 19.08.2019 had stayed all such transfers/posting which had not been acted upon or complied with. On account of the uncertainty with regard to the place of posting of the petitioner in view of the aforesaid circumstances, a lenient and sympathetic view was taken by the Principal Chief Conservator of Forest Department, Forest & Climate Change, Government of Bihar, pending consideration of the case of the petitioner at the level of the State Government and the petitioner was accommodated at Ara Forest Range under Bhojpur Forest Division Ara. Thus, it would be apparent that the petitioner continued to be posted at Ara, for all practical purposes, right from his posting at Ara vide order dated 27.05.2015, as aforesaid and only by the impugned order dated 10.12.2019, after the approval of the State Government, the petitioner was transferred from the Bhojpur Forest Division at Ara to Working Plan Division, Patna and thereafter he has been relieved by the Bhojpur Forest Division



vide order dated 23.12.2019 in order to enable him to join at Working Plan Division Patna, whereafter the petitioner has also submitted his joining on 07.01.2020, which has been duly accepted by the concerned respondent authorities. Thus, this Court finds that, strictly speaking, the petitioner has actually been transferred not within a period of two and half months, as averred in the writ petition by the petitioner but after more than four and a half years, hence this Court finds that there is no merit in the case as put forth by the petitioner and the submissions advanced by the learned counsel for the petitioner, even on facts, consequently the present writ petition is liable to be dismissed.

Now, coming to the law on the subject matter, firstly it would be relevant to state that it is a settled law that transfer is an incidence of service and there is no vested right in the employee to have a choice place of posting, even if the rules provides for the same. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the case of **B. Varadha Rao vs. The State of Karnataka & others** reported in **1986(4) SCC 131** as also the one reported in **(2009) 15 SCC 178 (Rajendra Singh & Anr. Vs. The State of U.P. & Anr.)**. It is equally a well settled law that once the notification relating to transfer of an employee is acted upon, nothing subsists and the notification of transfer becomes redundant for all purposes, as



such, the question of cancelling or rescinding such order of transfer does not arise. Reference in this connection be had to a judgment reported in **2000(3) PLJR 139 (Mahmood Azam Sidiqui & Anr. Vs. The State of Bihar & Ors.)**. In this connection, reference be also had to a judgment reported in **2000(2) PLJR 332 (Smt. Jyotsana Kumari Vs. The State of Bihar & Anr.)**. Thus in the present case since the petitioner has already acted upon the order of transfer dated 10.12.2019, impugned herein, by submitting his joining at Patna, which has also been accepted, nothing subsists for consideration, more so since the said order of transfer has already spent its force on account of the same having been acted upon, thus none of its substantive part remains to be rescinded.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, accordingly, the same stands dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	18.06.2020
Uploading Date	08.08.2020
Transmission Date	N.A.

