

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3874 of 2019

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Jitendra Kumar S/o Baleshwar Prasad R/o Sarshwati Sadan East Lohani Pur,
P.S- Kadamkuan, Dist-Patna

... .. Petitioner/s

Versus

1. The State of Bihar s through Principal Secretary, Health Government of Bihar,Patna
2. The Principal Secretary,Health Department, Government of Bihar,Patna
3. The Director in chief, (Disease Control) Health Services, Government of Bihar,Patna
4. The Civil Surgeon cum Chief Medical Officer, Patna. Gardanibagh,Hospital Campus, Patna
5. The Civil Surgeon cum Chief Medical Officer, west Champaran (Bettiah)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi Sr. Adv. With Ms.Sudha Chandra Adv.
For the Respondent/s : Mr.Shailendra Kr. Singh AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-06-2020

The matter has been listed today for consideration through Video Conferencing.

Learned senior counsel representing the petitioner and the State are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

Heard Mr. P.K. Shahi learned Sr. counsel for the petitioner and AC to PAAG-2 appearing for the State.

From the office of the Civil Surgeon-cum Chief Medical



Officer, Patna, the petitioner's services have been transferred to the disposal of the office of the Civil Surgeon-cum- Chief Medical Officer, West Champaran, Bettiah. The order of transfer is dated 30.11.2018. The same has been stayed by an earlier order dated 01.03.2019 passed in the instant proceedings.

The learned Sr. counsel submits that the petitioner is a member of the Sub Cadre at the District level in the office of the Civil Surgeon –cum Chief Medical Officer, Patna. The transfer of the petitioner is contrary to the Bihar Health Clerical Cadre Rules, 2014 (for short ' 2014 Cadre Rules') notified by the State Government in the Health Department on 01.12.2014. The same contemplates a Regional Clerical Cadre and Sub Cadres at the District level under the office of the Civil Surgeon-cum- Chief Medical Officer and the Medical Colleges and hospitals.

The transfer from one District's Sub Cadre to another is permissible under Rule 16 of the 2014 Cadre Rules. The Rule 16, however, specifies that transfer from one District to another is to be done by the Director- in- Chief, Health Services, Bihar, in cases such as sudden requirement, or if there is shortage of staff in a District and that is required to be filled up.

The learned senior counsel , therefore, submits that for



resorting to the said provisions, reasons as contemplated therein must exist. In the instant case, petitioner's transfer order does not contain any such reason for resorting to the exceptional transfer from one District to the other.

On the other hand, the learned State counsel submits that Rule 16 permits such inter District transfers by the Director-in-chief Health services as he is the Controlling Authority of both the Sub Cadres of Clerical posts. It is submitted that in administrative exigencies, such powers are to be exercised. The transfer order is issued by a competent authority, in the interest of administrative exigency, and requires no interference.

There can be no two views regarding existence of power in the Director-in-chief, Health Services for affecting such inter District transfer. Rule 16 of the 2014 cadre Rules which provides the source of such power, however, in the same breath requires that such inter district transfer are to be resorted to under the circumstances as illustrated therein, so as to justify the departure from normal transfer, intra District. The transfer order does not contain any reason whatsoever so as to bring it within the scope of Rule 16 of 2014 Cadre Rules. Even the counter affidavit which has been filed does not disclose that there was any reason such as urgent requirement or shortage of



staff forming the basis of the petitioner's inter district transfer outside his sub cadre in the district of Patna. The inter State district transfer of the petitioner, therefore, cannot be sustained as being one issued under the Rule 16 of the 2014 Cadre Rules. In absence of any reasons, as contemplated under Rule 16 of the 2014 Cadre Rules, the order of transfer suffers from arbitrariness.

It is trite law that any decision, whether simple administrative decisions or policy decision, if taken without considering the relevant facts can only be terms as an arbitrary decision and violative of the mandate of Article 14 of the Constitution of India. In the instant case, there is no consideration of the fact relevant to exercise of discretion for transferring a member of the District Level Sub cadre, to another district under Rule 16 of the 2014 cadre Rules, taken note of above. In fact, no reason whatsoever has been assigned.

The legality of such a transfer order, sans reasons, and in purported exercise of power under Rule 16 of the 2014 Cadres Rules fell for consideration before this Court in the case of ***Rajan Kumar vs. The State of Bihar through the Principal Secretary, Health Department and others.*** reported in **2020 (1)PLR 425**. In the said case also due to non- availability of any



reasons on record for invoking the powers under the Rule 16 of the Cadres Rules of 2014, the transfer order was set aside.

Having considered the entire issues and in view of the observation made hereinabove, this Court would quash the order of transfer dated 30.11.2018 passed by the Director -in-chief (Disease Control) Health Services, Government of Bihar Patna, as contained in Annexure-7 to the writ petition.

The writ petition stands allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22/06/2020
Transmission Date	

