

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8614 of 2021

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Shashi Prakash Son of Sri Pritam Rai, Resident of Haripur Colony, Digha
Ghat, P.S. Digha, District – Patna. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The State of Bihar through its Principal Secretary, Rural Development
Department, Govt. of Bihar, Patna.
3. Special Secretary, Rural Development Department, Govt. of Bihar, Patna.
4. The Chief Electoral Officer, Bihar, Patna.
5. The Bihar State Election Commission, Bihar, Patna.
6. The District Magistrate, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Priyanka Singh
For the Respondent/s : Mr. Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 09-02-2022

This matters heard via video conferencing due to
circumstances prevailing on account of COVID-19 Pandemic.

2. In the instant petition, the petitioner has prayed for
the following reliefs:

(A) A writ in the nature of Certiorari or
any other appropriate writ/s, order/s, direction/s
for quashing the following:-

(i) The order contained in the letter
dated 27.1.2021 issued by the Secretary, Bihar
State Election Commission, Patna to the Principal
Secretary, Rural Development, Bihar, Patna
figuring the name of the petitioner at serial
number 19 as a officer against whom charges is
pending.

(ii) The order contained in Memo No.



416912, dated 15.3.2021 by which the petitioner was transferred from the post of Block Development Officer-cum-Rural Development Officer cum Returning Officer, Singhwara block of Darbhanga district to the post of Assistant Project Officer (APO) Madhepura.

(B) A writ in the nature of Mandamus or any other appropriate writ/s, order/s, direction/s commanding the respondents for the followings:-

(i) To hold the order contained in Annexure-3 and 4/to the petition are non est in the eye of law.

(ii) To hold that the petitioner has not committed any irregularity and illegality in the Panchayat Election, 2016 of Arai Birdipur Panchayat falling within Singhwara block of Darbhanga District at all.

(iii) To hold the blacklisting of petitioner from the election duty is non application of the mind and contrary to the material on record including the enquiry reports.

(iv) To allow the petitioner to continue on the post of Block Development Officer of Singhwara Block of Darbhanga District.

(C) To any other relief/s for which petitioner is in entitled to.

3. The learned counsel for the petitioner submitted that he will not press in respect of challenge to the order dated 27.1.2021 in which the Bihar State Election Commission has



notified number of officers who are facing enquiry and they are not entitled to be posted for election duty in which the petitioner's name appears at serial number 19. The petitioner has no issue that he should be posted for election work. Therefore, he is restricting to the present petition in so far as challenge to the order of transfer dated 15.3.2021.

4. Learned counsel for the petitioner further submitted that the petitioner is being frequently transferred from one post to another post. On 15.3.2021 the petitioner has been transferred from the post of Block Development Officer cum Rural Development Officer cum Returning Officer, Singhwara block of Darbhanga District to the post of Assistant Project Officer, Madhepura. It is submitted that such a impugned transfer action is not warranted and it is arbitrary and illegal as it is pre-mature only disturbing the petitioner from the post held by him in Dharbhanga District. Per contra, the learned counsel for the respondents resisted the aforesaid contention and submitted that such transfer is with reference to the letter dated 27.1.2021 of the Secretary, Bihar State Election Commission, Patna and his observation that the petitioner was facing certain allegation and is pending consideration.

5. Learned counsel for the State has also pointed



out from para-6 of the counter affidavit on behalf of the second respondent.

6. Heard learned counsel for the respective parties.

Undisputedly, the petitioner was working as Block Development Officer cum Rural Development Officer cum Returning Officer, Singhwara Block of Darbhanga District and he has been posted as Assistant Project Officer, Madhepura. Such action has been taken pursuant to the communication dated 27.1.2021 of the State Election Commission. The State Election Commission has notified such letter only to the concerned authority that the petitioner and others were facing certain charges and they are not entitled to be posted for election duty. Therefore, the second respondent at the best should have withdrawn the election duty assigned to the petitioner like Returning Officer, Singhwara block of Darbhanga District and not transferring the petitioner from Darbhanga District to Madhepura as it is pre-maturely displacing him.

7. Assuming that the petitioner was facing certain allegations and enquiry is pending, the same would not permit the second respondent to shift the petitioner from the post of held by him prematurely. At the best the competent authority is permitted to take action in suspending of such officer and



proceed to take disciplinary action. In other words, the impugned order of transfer dated 15.3.2021 amounts to punitive action which is not permissible. If any allegations are levelled against an officer or employee in that event, the employer is permitted to take disciplinary action. In the light of these facts and circumstances, the petitioner has made out a prima facie case so as to interfere with the Memo No. 416912 dated 15.3.2021 and it is set aside.

8. Moreover, recently Hon'ble Apex Court in the case of *Ms. X vs. Registrar General, High Court of Madhya Pradesh and Anr. Reported in 2022 Live Law (SC) 150* it is held as under:-

“61. The Court has held normally an order of transfer, which is an incident of service should not be interfered with, unless it is found that that the same is mala fide. It has been held that mala fide is of two kinds –one ‘malice in fact’ and the second ‘malice in law’. When an order is not based on any factor germane for passing an order of transfer and based on an irrelevant ground, such an order would not be sustainable in law.”

9. The concerned respondent is hereby directed to restore the petitioner's position to the post of Block Development Officer cum Rural Development Officer only he



shall not be assigned election duty till the communication dated 27.1.2021 of the Secretary, Bihar State Election Commission, Patna is modified or withdrawn. The petitioner shall be put back to the post held by him within a period of two weeks from the date of receipt of this order.

10. The petition stands allowed.

(P. B. Bajanthri, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2022
Transmission Date	NA

