

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16037 of 2021

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Anil Kumar Karak Son of Late Badri Naryan Karak R/o Mohalla -
Bidyapatinagar, Ward No. - 48, P.S. Bahadurpur, District- Darbhanga (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Ministry of Finance,
Government of Bihar, Patna.
2. The Under Secretary, Ministry of Finance, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Subodh Kumar Barnwal
For the Respondent/s	:	Mr.Ajay Kr. Rastogi (Aag10)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 13-01-2022

This matter is 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. For issuance of writ in the nature of certiorari to
quash the order contained in Memo No. 1028 dated
29.06.2018 and Memo No.416 dated 03.05.2020
issued under the signature of Respondent No.-3 herein
the District Magistrate Darbhanga whereby and
whereunder the petitioner has been transferred from
treasury office in contravention to the gazette
notification dated 25.01.1999 in pursuance to a
resolution bearing Resolution No.593 dated 21st July,
1993.

B. For issuance of writ/s, an order/s, a direction/s in
the nature of mandamus commanding upon the



respondents to reinstate the petitioner in its original cadre of appointment and commanding upon the respondents to give continuity of past services to the petitioner after reinstating him in original cadre of Treasury and Accounts and to give him seniority in service with all consequential benefits.

C. For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. Crux of the matter in the present petition is whether employees from the Treasury Department could be transferred to Collectariat Department or not?

4. Learned counsel for the petitioner has submitted that the employees of the Treasury Department are not entitled to be transferred to any other department like Collectariat. On this count itself, the impugned order of transfer is liable to be set aside.

5. Per contra, learned counsel for the respondents resisted the aforesaid contention and submitted that in terms of notification dated 22.02.2006 (Annexure-A to the counter statement) State Government is empowered to transfer employees of the Treasury Department to Collectariat Department, as the aforesaid notification merges non-gazetted employees of the Treasury Department and the Collectariat Department. Therefore, there is no infirmity in the order of transfer, hence, the petition is liable to be set aside.



6. Heard learned counsel for the respective parties.

7. It is undisputed that the petitioner is employee of the Treasury Department. Petitioner has been transferred to Collectariat from the Treasury Department while holding a non-gazetted post. Source of power for such transfer is notification dated 22.02.2006 vide Annexure-A to the counter statement. Each of the Department are governed by the respective statutory rules framed under Article 309 of the Constitution of India. Therefore, notification dated 22.02.2006 do not change the rules of recruitment in respect of Treasury Department to Collectariat Department, as long as relevant Rules of Treasury Department and Collectariat Department were amended appropriately to the extent that the non-gazetted post in the respective departments were merged and they are transferable under the relevant statutory rules.

8. The notification dated 22.02.2006 cannot override statutory rules framed under Article 309 of the Constitution of India. The Apex Court in the case of **K. Kuppusamy and Anr. Vs. State of T. N. and Ors**, reported in (1998) 8 SCC 469, held that Executive orders cannot override the statutory Rules. That apart, the Apex Court in a number of decisions concluded that “any rule framed under Article 309 of the Constitution can only be replaced by an Act of an appropriate Legislature. It cannot be replaced by



the Executive order under Article 162 of the Constitution or 166 of the Constitution. The State Government cannot issue executive instruction under Article 166 of the Constitution to replace the procedure already occupied by the statutory rules framed under Article 309 of the Constitution of India. It also cannot alter the Rules made under Article 309 of the Constitution by means of an Executive order.”

9. In the light of these facts and circumstances, source of power to transfer Treasury Department employees to Collectariat Department vide notification dated 22.02.2006 cannot override the relevant rules of recruitment in the Treasury Department to Collectariat Department. Thus, the petitioner has made out a case so as to interfere with the impugned orders dated 29.06.2018 and 03.05.2020 and the same are set aside.

10. The petition stands allowed.

(P. B. Bajanthri, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.01.2022
Transmission Date	NA

