

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.146 of 2022

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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. The 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.

... .. Appellant/s

Versus

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

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG - 4 Mr. Deepak Sahay Jamuar (Ac To AAG 4)
For the Respondent/s	:	Mr. Ansul, Advocate Mr. Ravi Shankar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 23-01-2023

Heard Mr. Anjani Kumar, learned AAG-4 for the appellants/State and Mr. Ansul for the sole respondent.

The respondent had been transferred to a different location under the communication made by the State Election Commission, which in a general manner,



had issued instructions that any officer who is posted in his home district or who is facing departmental proceeding, ought not to be entrusted with the election work. The communication further entailed that a BDO and the other officers in the department would be the designated officers for conducting the election.

On the strength of the aforementioned communication by the State Election Commission, the respondent, who at the relevant time was posted as BDO, was transferred to a different location.

The learned Single Judge while hearing the writ petition of the respondent against the order of transfer found that the State had taken into account the factum of departmental proceeding having been initiated against him as also his conduct in the past with regard to elections was not above board. The learned Single Judge, therefore, concluded that his transfer was thus a punishment.

There cannot be any punishment by way of transfer.

The learned Single Judge therefore specifically directed for the restoration of the respondent at his original place of posting. Before this appeal could be heard by us, the respondent was restored to his original position. Nonetheless, this appeal has been preferred on academic and perhaps strategic grounds that such an officer ought



not to be allowed to stay at the place from where he was transferred out but such transfer order reversed under the orders of this Court, which decision is under challenge.

In order to hear the other side of the story, we had issued notice to the respondent, pursuant to which he has appeared through Mr. Ansul, learned Advocate.

Mr. Ansul submits that the respondent was wrongly transferred to another district midway supposedly in obedience to the communication made by the State Election Commission. The State Election Commission had only communicated not to entrust the election work to a class of officers and even if the respondent came within that class, there was no directive of the Election Commission to transfer him out. All that could have been done in compliance of the communication by the State Election Commission was to post him in a different capacity or not to entrust him with the election work.

Mr. Anjani Kumar for the appellants/State, however, submits that the respondent had been posted as the BDO, which post is crucial at the time of elections. His transfer to any other post would not have been administratively possible and therefore, he was transferred out but on the same post. Had there been any other intention except to follow the directives of the State Election Commission, the respondent would not have been



placed in the same position at a different location. He could have been placed at any other unimportant post. That not having been done, the learned Single Judge did not actually see that this transfer was a necessity and was justified on the premise of doctrine of necessity.

Be that as it may, today the order passed by the learned Single Judge has been executed.

The respondent has been sent back to his original position, where he has joined his duties.

The departmental proceeding but remains pending. On the last occasion when the respondent had not appeared, we were of the impression that the departmental proceeding has been concluded.

Under the aforesaid circumstances, we, even though not finding the order of the learned Single Judge to be absolutely defensible, would not like to disturb the executed order of the transfer.

However, the respondent shall not get any right to remain stay put at the place of his choice.

Though the issue is not before us but we, sitting in appeal, do direct that the departmental proceeding against him be concluded at the earliest. This re-transfer and our reluctance to upset the executed transfer even in the face of the order of the learned Single Judge being somewhat debatable, shall not be treated as precedent by



the Government authorities in dealing with the services of the respondent.

The appeal stands disposed of accordingly.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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