

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7374 of 2022

Pradeep Kumar Son of Sri Dashrath Singh, resident of Village- Chainpur, P.S.
- Gopalpur, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar the Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
2. The Director, Directorate of Economics and Statistics, under the Planning and Development Department, Government of Bihar, Patna.
3. The Joint Director (Administration), the Directorate of Economics and Statistics under Planning and Development Department, Government of Bihar, Patna.
4. The Assistant Director, the Directorate of Economics and Statistics under Planning and Development Department, Government of Bihar, Patna.
5. The Deputy Director, the Directorate of Evaluation under Planning and Development Department, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Subodh Kumar Jha, Advocate Mr.Pranav Kumar Jha, Advocate Mr.Chandra Mohan Jha, Advocate
For the Respondent/s	:	Mr.Vijay Kumar Verma, AC to GA- 2

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 20-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner, in the present case, has questioned the transfer vide letter bearing memo no. 296, Patna dated 15.02.2022 issued under the signature of respondent no. 3 by which the petitioner has been transferred and relieved vide memo no. 45 dated 23.02.2022 from the post of Sub-Statistical Officer, posted at the Directorate of Evaluation under Department of Planning & Development, Bihar, Patna to the



post of Block Statistical Officer, Ghoghardiha, District-Madhubani.

Learned counsel for the petitioner submits that the petitioner was working on the post of Block Statistical Officer in Sandesh Block, district – Bhojpur from where he was transferred to the office of the Directorate of Evaluation, Patna under the respondent department by office order contained in memo no. 708 dated 30.06.2021 (Annexure ‘1’ to the writ application). It is stated that only after 7 ½ months, the petitioner has been transferred from the Directorate of Evaluation under the respondent Department, Patna to Ghoghardiha Block within the district of Madhubani (Annexure ‘2’ to the writ application).

Petitioner has submitted his representation dated 17.02.2022 and 09.02.2022 as contained in Annexure ‘3’ and ‘4’ to the writ application and it is the submission of learned counsel for the petitioner that to avoid the disciplinary proceeding the petitioner joined on 07.03.2022 at the transferred place.

Learned counsel submits that as per the government’s policy contained in resolution no. 434 dated 01.03.2007 and resolution no. 881 dated 03.06.2009, the government servant



who has completed three years service on the present post may be transferred. But, in complete violation of the said guidelines the petitioner has been transferred within 7½ months for no plausible reason. In this regard, the resolution of the government which contains the policy as regards transfer of the government servant has been brought on record as Annexure '7' series.

Learned counsel submits that in identical matters of transfer, this Court has in CWJC No. 2755/2022 and CWJC No. 4972/2022 stayed the order of transfer. It is submitted that one CWJC No. 8614/2021 (**Shashi Prakash Vs. the State of Bihar**) was allowed by a learned coordinate Bench of this Court after noticing the judgment of the 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.**

Learned counsel submits that the policies of the government cannot be rendered nugatory by the respondent authorities and their non-observance of the policy of the government in the matter of transfer of the government employees is creating a lot of problems, it results in discrimination in the matter of transfer and posting and in the name of administrative exigencies which is completely in the closed file of the respondent authorities transfers are being



made. Learned counsel submits that such transfers are liable to be interfered with.

Learned counsel further submits that 42 persons along with the petitioner working in the Directorate of Economic and Statistics has been transferred by the letter no. 295 and 296 dated 15.02.2022. Except the petitioner all other persons were working in the office of Directorate for more than 8 and 10 years. Thus, by no stretch of imagination the petitioner would have been transferred for the reasons which were available in case of others only.

It is also pointed out that only after four months the respondent department issued transfer letter whereby 139 employees were transferred who were working in different regional office of the respondent department. 26 persons out of 139 have been again transferred back to their earlier place of posting. Vide memo no. 296 dated 15.02.2022. This, according to learned counsel, amply demonstrates that the word “administrative exigencies” cited as a cause for transfer is nothing but a camouflage and is used only to cover malafide action of the State.

Learned counsel further submits that the respondent department issued another office transfer order vide memo no.



2278 dated 30.12.2022 by which six persons have been transferred out of which again two persons who stand at serial no. 2 & 5 were transferred back to their earlier place of posting. In the case of 42 persons who were transferred by the same memo by which the petitioner has been transferred 26 persons have been brought back to the same position.

A counter affidavit has been filed on behalf of the State. Learned counsel for the State has placed before this Court Annexure 'A' which is an office order dated 24.06.2022 and submits that due to shortage of manpower/staffs in the regional offices of the department, in the high level decision, the employees of the Directorate were transferred vide memo no. 296 dated 15.02.2022 to different regional offices. In that view of the matter alone, the transfer of the petitioner has been justified.

So far as the specific pleading and pleas taken by the petitioner demonstrating that the persons who had stayed for 8 to 10 years were transferred by the same memo and 26 of them were brought back to their earlier position within a short period is nowhere answered.

Having regard to the submissions noted hereinabove and the materials available on the record, this Court is of the



considered opinion that there are more than sufficient materials on the record to hold that the transfer of the petitioner is completely arbitrary, *de hors* to the government's guidelines and the policies which are contained in Annexure '7' series and such transfer of the petitioner has no basis on the face of the fact that out of 42 persons who were transferred, except the petitioner all others had continued for 8 to 10 years in the same office but then 26 of them were again brought back. In the case of **Ms. X Vs. Registrar General, High Court of Madhya Pradesh** the Hon'ble Apex Court has observed in paragraph '61' 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."

In the totality of the facts revealed from the records, this Court would have no hesitation in holding that the transfer of the petitioner suffers from the vice of malice in law at least and is liable to be quashed. The memo of transfer in so far as it relates to the petitioner is hereby quashed. The respondent authorities are directed to place the petitioner in the same



position from where he was transferred within a period of 7½ months only. The respondents are also directed to ensure that the government policies and guidelines are duly followed while effecting the transfers otherwise such government policies would remain as a waste paper only.

This Writ Application stands allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

U			
---	--	--	--

