

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.311 of 2023

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Himanshu Shekhar S/o Late Vipul Kumar Ghosh, R/o Nek Nam Shah Dargah
Lane, Bhikhanpur, Gumti No. 2, P.S.-Ishakchak, District-Bhagalpur-812001.

... .. Petitioner

Versus

1. The State of Bihar through the Cabinet Secretariat and Co-ordination Department, Govt. of Bihar, Old Secretariat, Patna.
2. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
3. The Secretary to the Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The Senior Establishment Deputy Collector, Bhagalpur Collectorate, Bhagalpur.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Purushottam Kumar Jha, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad, SC-8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 27-02-2023 Heard learned counsel for the petitioner and SC-8 for

the State.

Petitioner in the present case is seeking the following
reliefs:-

“(i) To hold and declare that in view of the
policy decision formulated by the Cabinet
Secretariat and Coordination Department,
Government of Bihar, Patna as contained in Letter
No. 434 dated 01.03.2007 (Annexure -1 at Page
No. 16 -17) the Divisional Commissioner
Bhagalpur has had no jurisdiction to interfere in
the process transfer of the Class III employees of
Bhagalpur Collectorate.

**AND THE CONSEQUENT UPON SUCH
DECLARATION**



(ii) A writ in the nature of mandamus may kindly be issued by this Hon'ble Court for quashing the Order issued by the Divisional Commissioner, Bhagalpur as contained in Letter No. 1551 dated 23.11.2022 (Annexure -11 at page no. 35 -36 to this writ petition), whereby and whereunder 09 Class III employees of Bhagalpur Collectorate has been transferred from one place to another including the transfer of this Petitioner from District Panchayat Raj Office at Block office Sanhaura.

(iii) Issuance of an order direction or a writ in the nature of certiorari quashing the Order of the District Magistrate Bhagalpur as contained in Memo No. 1691 dated 26.11.2022 (Annexure -12 at Page No. 37), whereby and whereunder the Petitioner and other similarly situated persons named at Annexure -09 at page no. 33 to this writ petition including this petitioner have been relieved for joining the transferred place of posting so mentioned in Column No. 5 of the Order impugned dated 23.11.2022 (Annexure -11 at Page No. 35- 36 to this writ petition) and consequent upon the quashing of Annexure 11 and 12 to this writ petition, the Petitioner may be allow to work in the office of District Panchayat Raj Officer, Bhagalpur where the Petitioner had been posted on 05.07.2020 only and had not completed his three years tenure in the Officer of District Panchayat Section.

(iv) For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.”

Learned counsel for the petitioner submits that the



petitioner was initially appointed as a Clerk in Bhagalpur Collectorate on compassionate ground on 05.03.1993. Thereafter, he continued with his posting in the Establishment Section of the Bhagalpur Collectorate till 14.06.2001. In Paragraph '4' of the writ application, the place of posting of the petitioner has been shown in a tabular form, it shows that from 15.06.2001 to 27.06.2005, he was posted in the District Supply Office, Bhagalpur Collectorate, from 28.06.2005 to 04.07.2010 in the Circle Office, Kahalgaon, Bhagalpur and admittedly since 05.07.2010 till the date of his transfer vide Annexure '11' to the writ application, he continued in the Bhagalpur Collectorate at Bhagalpur in the different offices such as District Stamp Office, District Panchayat Raj Office, Bhagalpur, District Revenue Office and again in District Panchayat Raj Office.

Learned counsel for the petitioner submits that the order of transfer has been issued on the complaint made by one Mr. S. Kumar, Advocate. It is further submitted that the order of transfer has been issued by the Divisional Commissioner, Bhagalpur, who is not the competent authority/ controlling authority of the petitioner. On these two grounds, the order of transfer has been assailed.

Learned counsel for the State submits that one Mr. S.



Kumar, Advocate had informed the District Headquarter that there are several such Clerks who are posted in the same office/ Headquarter for several years. In the application, the names of ten such Clerks were mentioned. The name of this petitioner appears at serial no. 6 and it is stated that he is regularly posted at Bhagalpur for last 18 years.

Attention of this Court has been drawn towards Annexure '6' to the writ application by which the Commissioner called for a report from the District Magistrate, Bhagalpur asking as to how many such Clerks are posted at one place for more than three years. A further direction was issued to post the ten Clerks at different Distant Circles/ Block Offices. The District Magistrate, Bhagalpur informed the Commissioner vide Annexure '7' to the writ application in which he stated the reasons for not transferring five Clerks out of ten who were mentioned in Annexure '6' to the writ application. As regards this petitioner, it shows that he was posted in the District Revenue Office, Bhagalpur since 05.07.2020. Learned counsel for the State further submits with reference to Annexure '11' to the writ application that on finding that the District Magistrate, Bhagalpur had not complied with the direction of the Commissioner issued a specific direction to relieve all the ten



Clerks and post them in the offices mentioned against their name. Pursuant to the direction contained in Annexure '11' to the writ application, the petitioner has been posted in the Block Office, Sanhaura in the District of Bhagalpur. It is stated that the petitioner has already joined at his transferred place on 01.12.2022. Learned counsel for the State has relied upon Annexure '1' which is the resolution no. 434 dated 01.03.2007 issued by the Cabinet Secretariat and Coordination Department, Government of Bihar which lays down the policy as regards transfer of the government employees. Attention of this Court has been drawn towards Paragraph '1(kha)' and it is submitted that those who had completed three years at a particular place of posting, their cases would be covered under this Clause and as per the Policy decision, they would be liable to be considered for transfer. In this case, the petitioner had been at Bhagalpur for last about 18 years and for last 10 years he was posted in Bhagalpur Collectorate in the different sections.

Having heard learned counsel for the petitioner and the State, this Court is of the considered opinion that so far as initiation of action on receipt of the information from Mr. S Kumar, Advocate is concerned, if the information contained therein were relevant and the competent authority acted upon



the same, no fault may be found with the said action. The source of information would be totally irrelevant in this case. The fact that the District Magistrate, Bhagalpur who was the controlling authority had not acted as per the policy decision of the government and that led to passing of the order by the Divisional Commissioner, Bhagalpur vide Annexure '11' to the writ application is another reason why this Court would not interfere with the same.

The case of the petitioner is squarely covered under the policy decision contained in resolution no. 434 dated 01.03.2007.

This application has no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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