

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10680 of 2023

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Hem Narayan Prasad, Son of Late Sukhdeo Raut, Resident of Village Ward No. 2, Sikaria, P.O. Ramchandra, P.S. Madhepur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Engineer in Chief Cum-Special Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Superintending Engineer, Public Health Engineering Darbhanga, Circle, Darbhanga.
4. The Superintending Engineer, Public Health Engineering Circle, Gaya.
5. The Executive Engineer, Public Health Division, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Anuj, Advocate
For the Respondent/s : Mr. Arvind Ujjwal (SC 4)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 25-07-2024 1. The petitioner was an Upper Division Clerk in the office of the Respondent No. 5. Vide an order, dated 30th of June, 2023, the petitioner was transferred from Public Health Division, Darbhanga to Public Health Engineering Circle, Gaya. In the transfer order, it was recorded that the said order of transfer was issued on the basis of the employee's own seeking. It was also directed that since the said transfer was on own volition of the employee, the petitioner would not be entitled to claim seniority over the employees posted at Public Health Engineering Division, Gaya. The petitioner, however, did not make any application seeking for his transfer. When the wife of

the petitioner filed application to The Engineer in Chief – cum - Special Secretary, Public Health Engineering Department, Government of Bihar, Patna, the transfer order of the petitioner was modified *vide* order, dated 4th of July, 2023, stating, *inter alia*, that the petitioner was transferred for administrative exigencies. The petitioner made a detailed representation before the Respondent Authority but his representation was not considered.

2. The learned Advocate on behalf of the petitioner submits that the order of transfer of the petitioner was not in accordance with law and the rules prevailing in the field. Therefore, the order of transfer is vitiated by malice. The Court should interfere into the matter under Article 226 of the Constitution of India. He also refers to the relevant Government Circular, wherein it is laid down that an employee shall be transferred only after completion of three years of service at a particular place. If any employee is transferred before the said period of three years, on the strength of some departmental order, the same shall be implemented.

3. Though a counter affidavit has been filed on behalf of the Respondent Nos. 2 to 5, none appears on their behalf at the time of hearing.

4. The learned Advocate for the petitioner draws my attention to Paragraph No. 18 of the counter affidavit, where it is stated on behalf of the Respondents that Rule 14 of Bihar Public Health Engineering Circle Level Clerical Cadre (Recruitment & Service Conditions) Rules, 2016 provides as under: -

“Level of the cadre – This cadre shall be at circle level, but in case of sudden necessity or exigencies like shortage of staff in a circle, the concerned zonal Chief Engineer / Engineer -in-Chief-cum-Special Secretary shall have powers to transfer an employee maintaining his seniority on the basis of his entry into the service.”

5. The impugned order of transfer was issued by the Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Government of Bihar, Patna. Therefore, the petitioner at best be transferred to his own Circle and not outside the Circle as per the general rule of transfer. In the transfer order, no special reason has been assigned in support of the transfer of the petitioner outside his Circle. Therefore, the impugned order is bad in law.

6. Transferability is one of the basic incidents of service. For the sake of administrative exigency, the higher

authority can transfer any employee from one place to another. The concerned incumbent can file a representation against his transfer but he cannot claim that he would not be transferred from one place to another or he would only be transferred within the Circle.

7. Therefore, with regard to the order of transfer, this Court is not inclined to interfere over the administrative order.

8. Since the petitioner was transferred due to administrative exigencies, he is entitled to avail all his past seniority in his new place of transfer.

9. With the aforesaid observation/direction, the instant petition sands disposed of.

(Bibek Chaudhuri, J)

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