

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16745 of 2023

Pravin Kumar S/o Ramayan Prasad R/o- Brahm Asthan, Nalkup Lane, Raja Bazar P.S.-Phulwari Dist.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through Additional Chief Secretary, Health Government of Bihar, Patna.
2. The Additional Chief Secretary, Health Department, Government of Bihar, Patna.-15
3. The Director-in-Chief, (Decease Control) Health Services, Government of Bihar, New Secretariat, Patna-1
4. The Civil Surgeon cum Chief Medical Officer, Patna. Gardanibagh, Hospital Campus, Patna-1.
5. The Additional Chief Medical Officer. Patna
6. The Civil Surgeon cum Chief Medical Officer, Kishanganj

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17159 of 2023

Jitendra Kumar Son of Late Baleshwar Prasad, R/o- Flat No.- 103, Block-B, Ambition Sapphire, Reliance Trends Campus, Baily Road, Khajpura, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Health Government of Bihar, Patna.
2. The Additional Chief Secretary, Health Government of Bihar, Patna-15.
3. The Director-in-Chief, (Decease Control), Health Services, Government of Bihar, New Secretariat, Patna-1.
4. The Civil Surgeon cum Chief Medical Officer, Patna Gardanibagh, Hospital Campus, Patna-1.
5. The Additional Chief Medical Officer, Patna.
6. The Civil Surgeon cum Chief Medical Officer, Kishanganj.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16745 of 2023)

For the Petitioner/s : Mr. Surendra Kr. Singh, Advocate



Mr. Gaurang Chatterji, Advocate
Mr. Tulika Singh, Advocate
Mr. Nilanjan Chatterjee, Advocate
Mr. Ujjwal Raj, Advocate
Mr. Sahil Kumar, Advocate
Mr. Aniruan Choudhari, Advocate
For the Respondent/s : Mr. Birju Prasad, GP 13
Mrs. Shweta Anand, AC to GP 13
(In Civil Writ Jurisdiction Case No. 17159 of 2023)
For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate
For the Respondent/s : Mr. Aditya Nath Jha, AC to SC 18

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 31-07-2024

Both the writ petitions are taken up together for disposal on the ground of the identity of facts and the reliefs prayed for by the petitioners. By an order dated 11th September 2023, the Director In-Chief (Disease Control Public Health and Para Medical)) Health Services, Bihar, Patna, issued an order of transfer by virtue of which three employees, namely, Sri Jitendra Kumar, Pravin Kumar, and Shiv Kumar Goswami were transferred from Patna to Kishanganj and Mokama respectively.

2. In CWJC No. 16745 of 2023, Pravin Kumar challenged the said transfer order as violative of Rule 16 of Bihar Health Regional Clerical Cadre Manual, 2014 (बिहार स्वास्थ्य क्षेत्रीय लिपिकीय संवर्ग नियमावली, 2014).

3. In CWJC No. 17159 of 2023, only Jitendra Kumar challenged the said transfer order on a similar ground. Thus, it appears from the record as well as the impugned transfer order that



another employee, namely, Shiv Kumar Goswami has not challenged the impugned order of transfer, and by his act and conduct, he complied with the said order of transfer issued on 11th September 2023.

4. The fact of the case may be stated in short, for proper disposal of the above-mentioned writ petitions.

4.1. On 9th September 2023, in the evening, police arrested two employees of Gardanibagh Civil Surgeon Hospital during a raid on the allegation that they were creating a nuisance in public after consuming liquor in the campus of Hospital premises. The names of the said two arrested persons are Kaushlendra Kumar and Upendra Kumar. After the arrest, one Anil Kumar, Sub-Inspector of Gardanibagh P.S. lodged a *suo motto* complaint, stating, *inter alia*, that he along with other members of force conducted a special raid on 9th September 2023 at about 08:15 pm. During the raid, he received a secret information that some people were causing a nuisance after consuming liquor in the premises of Gardanibagh Civil Surgeon Hospital. He reached there at about 08:45 pm and after seeing the police party 4/5 persons started to flee away. The police party managed to apprehend two persons and 2/3



persons, taking advantage of the darkness of the area, fled away. Subsequently, the apprehended persons disclosed their names as mentioned above. They were subjected to the Breathe Analyzer Test to ascertain as to whether they consumed liquor or not and, it was *prima face found* that the said persons consumed liquor which is prohibited in the State of Bihar. On the basis of the said complaint, submitted to the SHO Gardanibagh P.S., an FIR was registered being FIR Case No. 635 of 2023 dated 09th September 2023 against the said apprehended persons and other 2/3 unknown persons. It is on record that a charge-sheet was filed under Section 37 of the Bihar Prohibition and Excise (Amendment) Act 2022 against the Kaushlendra Kumar and Upendra Kumar. Since no evidence could be collected as to the identity of other persons who fled away, police submitted a final report against the said unknown persons. The incident was brought to the notice of the higher official of the Health Services and a Departmental Inquiry Committee, consisting of three senior doctors in service, was constituted. The Committee submitted its report, absolving the petitioners on the ground that no evidence could be collected against them. However, the petitioner,



namely, Jitendra Kumar was transferred to Primary Health Centre, Pothiya, Kishanganj from the office of the Additional Chief Medical Officer, Patna (Public Health Unit). Another petitioner, namely, Pravin Kumar has been transferred to Primary Health Centre, Terhagachh, Kishanganj from the office of the Civil Surgeon, Patna. The impugned transfer order contains the following observations:-

"सिविल सर्जन, पटना के कार्यालय में शराब सेवन के आरोप में सिविल सर्जन, पटना के - पत्रांक-12759, दिनांक 10.09.2023 द्वारा श्री कौशलेन्द्र कुमार, लिपिक, सिविल सर्जन कार्यालय, पटना को निलंबित किया गया है एवं इनके विरुद्ध गर्दनीबाग थाना कांड सं0-635/23. दिनांक 09:09:2023 से प्राथमिकी दर्ज की गई है, जबकि शेष तीन अन्य कर्मी शक के दायरे में है। इन कर्मियों को प्रशासनिक दृष्टिकोण से तत्काल स्थानांतरित किया जाता है।"

5. It is submitted by the learned Advocate for the petitioners that the petitioners were transferred only on suspicion that they consumed liquor with the FIR named accused Kaushlendra Kumar on 9th September 2023 and, therefore, they were transferred from their present place of posting to another place in another district on the ground of administrative exigency.



6. The learned Advocate appearing on behalf of the petitioners draws my attention to the Bihar Health Regional Clerical Cadre Manual, 2014. It is submitted by him that Rule 16 of the said manual runs as follows:-

“16. उपसंवर्गों का नियंत्रण- जिला स्तरीय उपसंवर्ग से संबंधित जिला में अवस्थित स्वास्थ्य विभागीय सभी कार्यालयों / कार्यक्रमों/ सभी प्रकार के अस्पतालों के लिपिकीय पदों पर पदस्थापन / स्थानान्तरण किया जायेगा; परन्तु दोनों उपसंवर्गों पर समग्र नियंत्रण निदेशक प्रमुख, स्वास्थ्य सेवाएँ, बिहार का रहेगा और अचानक जरूरत होने पर या किसी जिला में या किसी चिकित्सा महाविद्यालय अस्पताल में लिपिक के अभाव जैसी अत्यावश्यकता होने पर एक जिला उपसंवर्ग या चिकित्सा महाविद्यालय अस्पताल उपसंवर्ग के किसी सदस्य को दूसरे जिला उपसंवर्ग या चिकित्सा महाविद्यालय अस्पताल उपसंवर्ग में, सेवा में उसके प्रवेश के आधार पर उसकी वरीयता को अक्षुण्ण रखते हुए, स्थानांतरित करने की शक्ति निदेशक प्रमुख, स्वास्थ्य सेवाएँ, बिहार को होगी।”

7. The relevant portion of Rule 16 states that the District Level sub-cadre would be under the Control of the Director-in-Chief, Health Services, Bihar and if there is a requirement of clerical staff suddenly in any district or medical college or hospital, then such requirement would be filled up by transfer of clerical staff from one district to another or to another medical college or hospital. Thus, it is submitted by the learned Advocate



for the petitioners that the only ground, stated in Rule 16 which deals with the inter-district transfer, is a sudden requirement (अचानक जरूरत) of clerical staff in a particular district or medical college and hospital. The impugned order of transfer does not state that there was a sudden requirement in the district where the petitioners were transferred and to fill up such requirements, the transfers of the petitioners were necessary. The petitioners were transferred only on suspicion that they were involved in the illegal consumption of liquor, therefore, they were transferred on the ground of administrative exigency. The administrative exigency has not been described in the said order of transfer. Therefore, the order of transfer is bad, unfair, unjust, and violative of Articles 14 and 16 of the Constitution.

8. The learned counsel appearing on behalf of the State, on the other hand, submits that the petitioners were not only transferred on the ground of suspicion but, they were transferred under Rule 16 of the Bihar Health Regional Clerical Cadre Rule 2014 which clearly states that as a result of administrative exigency, the Director-in-Chief, Health Services, Bihar, Patna can transfer any employee of clerical cadre from one district to another or from one medical college to another or from one hospital to another. It is also contended on behalf of the respondents that



transferability is an incident of service. It is a prerogative of the employer to transfer an employee from one place to another following the rules. According to the learned counsel for the respondents, especially, respondent no. 03, the impugned transfer was made by the competent authority as per Rule 16 of the aforesaid Rules, 2014 on the administrative ground and on the basis of charge, which is apparent from the order itself.

9. The learned counsel appearing on behalf of the State, on the other hand, submits that the petitioners were not only transferred on the ground of suspicion but, they were transferred under Rule 16 of the Bihar Health Regional Clerical Cadre Rule 2014 which clearly states that as a result of administrative exigency, the Director-in-Chief, Health Services, Bihar, Patna can transfer any employee of clerical cadre from one district to another or from one medical college to another or from one hospital to another. It is also contended on behalf of the respondents that transferability is an incidence of service. It is a prerogative of the employer to transfer an employee from one place to another following the rules. According to the learned counsel for the respondents, especially, respondent no. 03, the impugned transfer was made by the competent authority as per Rule 16 of the



aforesaid Rules, 2014 on the administrative ground and on the basis of charge, which is apparent from the order itself

10. Learned counsel appearing on behalf of the petitioners in support of his contention refers to a decision of this Court in the case of ***Rajan Kumar v. State of Bihar***, reported in ***(2020) 1 PLJR 425*** wherein a Co-Ordinate Bench held that if the order of transfer does not disclose any reason for transfer of an employee to another district outside the cadre, such transfer order, being in the teeth of Rule 16, is unfair, unjust and liable to be set aside. He also refers to another unreported decision of this Court in ***CWJC No. 3874 of 2019 (Jitendra Kumar Vs. The State of Bihar through Principal Secretary, Health Department of Bihar, Patna and Others)*** decided on ***19th June 2020***. The same argument was advanced by the learned counsel on behalf of the petitioner. Respondents, on the other hand, urged that the transfer order was issued by the competent authority, in the interest of administrative exigency and required no interference. The Co-Ordinate Bench, on due consideration of the impugned order of transfer and Rule 16 of 2014 Cadre Rules, was of the opinion that the reason was to be stated under Rule 16 for the transfer of a clerk to another district. An omnibus phrase “Administrative Exigency” is not sufficient to



transfer the petitioners, taking resort to Rule 16 of the 2014 Cadre Rules.

11. Having heard the learned counsels appearing on behalf of the parties and on careful perusal of the entire materials on record, this Court finds that Jitendra Kumar, petitioner in CWJC No. 17159 of 2023 is the same Jitendra Kumar who filed CWJC no. 3874 of 2019 to stall the order of transfer from one district to another. He was successful in his first attempt. Again, the competent authority found that for administrative exigency, the petitioner, namely, Jitendra Kumar ought to be transferred. Again, he has approached this Court to set aside the order of transfer. It is a peculiar situation that the Court of Equity should take notice of, a particular employee was being ordered to be transferred from one district to another more than once and he was successful in quashing his transfer order previously and again he has come to quash the impugned transfer order (Annexure 9). Thus, the competent authority found him since 2019 that for administrative exigency his order of transfer ought to be made. Only on the ground that the reason for administrative exigencies has not been assigned in the transfer order, the petitioner Jitendra Kumar was successful in getting the previous transfer order quashed. Now, it falls for consideration of this Court as to whether an administrative



authority is under obligation to disclose the administrative exigency in the order of transfer. In my considered opinion, administrative exigency or 'in the interest of public service' are not required to be explained in the order of transfer. However, Rule 16 provides district transfer on the ground of sudden requirement (अचानक जरूरत) of clerical cadre in one district should be the only consideration for a district transfer.

12. In view of such circumstances, this Court is of the opinion that the Director-in-Chief (Disease Control), Health Services, Government of Bihar, Patna is directed to reconsider the impugned order of transfer of the petitioners in the light as to whether there is actual requirement in their proposed place of transfer of clerical cadre and in the absence of requisite number of cadre strength in their places of transfer, the impugned transfer order shall remain valid. If there is no requirement of additional clerical staff in their new places of posting, the impugned order shall be quashed. The respondent no. 03 is directed to comply with the order within 30 days and assess the requirement of clerical staff in the proposed place of transfer of the petitioners and, if he finds an actual requirement, the petitioners would be transferred with immediate effect.



13. Accordingly, both the writ petitions are disposed of with
the above direction.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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