

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17726 of 2023

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Jitendra Kumar S/o Late Siddhnath Prasad R/o- ward No-7 P.H.E.D Campus,
village-Sisauna, post and p.s- Jokhihat Dist-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. Of Bihar Patna.
2. The Add. Chief Secretary, General Administration Department.
3. The principal secretary Public health engineering department, Govt. of Bihar Patna.
4. The Engineer-in-chief-cum- Special secretary, public health engineering department, Govt. of Bihar, Patna.
5. The Zonal chief engineer, public health engineering department, Govt. of Bihar Patna, Purnia Zone, Purina.
6. The Superintendent Engineer P.H Engineering circle -Purina.
7. The Executive engineer, public health division, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Pandey, Advocate
For the Respondent/s	:	Mr. Raghwanan, GA (11)
		Mr. Pratik Kumar, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 28-11-2024

Heard Mr. Siyaram Pandey, learned counsel
appearing on behalf of the petitioner and Mr. Raghwanand,
learned GA-11 along with Mr. Pratik Kumar, learned AC to GA-
11 for the State.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought, *inter alia*, the following relief(s), which is
reproduced hereinafter:-

*“i. Writ of Certiorari for setting
aside/Quashing of the office order number 298 Dated
01.11.2023 as contained in memo no.1276 dated-
1.11.2023 issued by the Office of the Public Health
Engineering Department, Bihar, Patna (An-2)*



undersigned by the Engineer in Chief – cum – Special Secretary by which the petitioner was transferred from P.H. Division, Araria to P.H. Division, Bhabua, who was earlier sent on deputation from Public Health Division, Araria to Public Health Division, Katihar vide office order No.16 dated- 7/10/2023 as contained in memo No 346 dated 7/10/2023 and vide office order no. 106 dated- 10/10/2023 (Ann- 23/A & 24), he was earlier relieved from PH Division Araria to PH Division, Katihar, and again on 2/11/2023 he was relieved from PH division Bhabua, vide its office order No.115 dated- 2/11/2023 in a highly arbitrary, whimsical and wrong manner against the policy of the govt. (An-29).”

BRIEF FACTS:

3. Brief facts of the case are that the father of the petitioner was a Group-D employee at Public Health Engineering Department., who died in harness on 20. 01. 2009 and after the death of the deceased employee, the petitioner, being the legal heir of the deceased employee, has been appointed on compassionate ground on 12.02.2011. The Superintending Engineer, PH Circle, Purnea vide Letter No. 555 dated 06.10.2023, mentioning the charges against the petitioner, requested to transfer the petitioner on administrative ground to another division. In light of aforesaid communication, the Chief Engineer, PH Zone, Purnia vide Letter No. 341 dated 07.10.2023 requested the Engineer-in-Chief – cum – Special Secretary to transfer the petitioner in other division on administrative ground. The petitioner, vide Office Order No. 298 contained in Memo No. 1276 dated 01.11.2023, issued under the signature of Engineer-in-Chief- cum-Special



Secretary, was transferred from PH Division, Araria to Public Health Division, Bhabhua on administrative ground. The petitioner has joined on 06.11.2023 at Public Health Division, Bhabhua.

SUBMISSIONS ON BEHALF OF THE PARTIES:

4. Learned counsel appearing on behalf of the petitioner referring to Para 4(iii) of the letter contained in Memo No.1243 dated 08.10.2014 submitted that in case there is charge on an employee and if the employee is disobeying the order of the authority and not discharging his job properly, he should be given show cause to explain his case but not transfer him because transfer is not the only way. Learned counsel orally submitted that no show cause was issued to the petitioner. He further submitted that so far as the law/policy regarding transfer of employee is concerned, it is clearly mentioned that as far as possible, he should be deployed at the division/circle/range where he used to live but not in other district (Annexure 31 to the writ petition) and on these grounds, he submitted that the transfer order is punitive in nature and calls for interference by this Court.

5. *Per contra*, Mr. Raghwanand, learned counsel



appearing on behalf of the State, referring to Annexure R/C to the counter affidavit, submitted that a letter no.555 dated 06.10.2023 was issued by the Superintending Engineer, PH Circle, Purnia, in which, an allegation of misconduct was made against the petitioner, for which, the Executive Engineer, Public Health Engineering Circle, Purnia issued a show cause to him and his reply to the show cause was not found satisfactory by the authority. Learned counsel further submitted that the petitioner has not come out with a clean hand by not controverting the alleged misconduct in any manner. Learned counsel referring to para-24 to the counter affidavit, informs that the conduct of the petitioner cannot be said to be good, as time and again, from the very date of his joining, the petitioner has not shown good conduct and for his alleged misconduct, from time to time, he has been given show cause. However, on technical grounds, he could get order of this Court. Referring to para-24 to the counter affidavit, learned counsel submitted that the petitioner's oral submission and information cannot be accepted in view of the fact that the petitioner himself has stated that the said Executive Engineer has given him show cause, stating therein that under what circumstances, he has informed the office about the allotment of work, which also finds mention



in Annexure R/C to the counter affidavit, wherein it has been made clear that the show cause of the petitioner was not found satisfactory by the authority and as such, the same was rejected and on the ground of misconduct and in public interest, the petitioner was transferred to Bhabhua district.

CONCLUSION:

6. Having considered the rival submissions made on behalf of the parties, I find that the petitioner has not come before this Court with a clean hand and his conduct cannot be said to be sound, in view of the fact that long back, after his joining, the petitioner had filed a writ petition, bearing CWJC no.2813 of 2015 (Annexure-1) against his suspension order dated 05.02.2015, which was dismissed vide order dated 18.02.2015 on the ground of being premature and rushed application. The order of the Hon'ble Single Judge was interfered by LPA No.585 of 2015 vide order dated 15.05.2015 (Annexure – 1/A), in which this Court has observed that the petitioner has faced disciplinary action for not having turned up in Flag Hosting Ceremony on 26.01.2015, for which a show cause notice was issued on 27.01.2015 to him, along with other members and the following order has been passed in paragraph no.6, which is reproduced hereinafter:

“6. Arguments are also advanced on merits.



It is pleaded that the allegation itself is trivial, and the same does not warrant suspension of the appellants. As long as the jurisdiction of the authority to place an employee under suspension is not an issue, this Court cannot examine justification or otherwise of the suspension. The reason is that the suspension, pending enquiry, is not a punishment, and it is resorted to ensure that the concerned employee co-operates in the enquiry. Taken in isolation, the allegation may be trivial. However, the appointing authority took a serious view of the matter. This Court cannot sit in appeal in matters of this nature. The minimum that can be done is to direct the 6th respondent to pay the subsistence allowance regularly and conclude the departmental proceeding at the earliest."

7. The petitioner after having found to have shown disregard and also for the reason that he retained important records with him for a long period, which fact is dealt in the transfer order contained in Annexure-28, it appears that the petitioner has been transferred in public interest due to administrative exigencies. I also find that, time and again, complaints were made against the petitioner on the ground of alleged misconduct and in the said view of the fact also, I don't find any infirmity in transfer order with regard to the petitioner.

8. Accordingly, the present writ petition stands dismissed.

9. However, so far as the grievance of the petitioner is concerned that he has not been paid salary for the period of thirteen months, the authority must verify whether the petitioner has joined the place of transfer and he was working regularly. In case, it is found that the petitioner has worked for the said



period, it goes without saying that he must be paid salary without fail.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2024
Transmission Date	NA

