
(2014) 08 JH CK 0092

In the Jharkhand High Court

Case No : W.P. (S) No. 3760 of 2013 and 3389 of 2014

Abhay Prasad Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 1 AJR 503

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani and J.S. Tiwary, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The writ petition W.P.(S) No. 3760/2013 was preferred by the same petitioner earlier being aggrieved by a Notification of transfer bearing Memo No. 787 dated 22.6.2013, whereunder he was transferred from the post of District Animal Husbandry Officer, Dhanbad to Lohardaga. By interim order dated 4.7.2013 passed in the said case, it was observed that until further order, the petitioner shall not be relieved, if not already relieved pursuant to the impugned transfer order.

2. The petitioner has been transferred, however, once again by a Notification bearing No. 732 dated 30.6.2014 from the post of District Animal Husbandry Officer, Dhanbad to Simdega. The respondent No. 3 in WP(S) No. 3389/2014 has been posted in his place from his earlier place of posting as Veterinary Surgeon, Dhanbad. The notification dated 30.6.2014 has been challenged in the subsequent writ petition WP(S) No. 3389/2014 and at the same time a declaration has been sought that the action of the respondents in transferring the private respondent, who is allegedly working for more than 24 years at the same place, is void and illegal.

3. Mr. Anil Kumar Sinha, learned senior counsel appearing on behalf of the petitioner, while arguing in support of the petitioner's case to challenge the

notification dated 30.6.2014 in WP(S) No. 3389/2014, has, inter alia, submitted as follows:

"(i) That the impugned notification has been passed in the teeth of the interim order dated 4.7.2013 in WP(S) No. 3760/2013 without seeking any leave from the Court or without the said interim order being vacated.

(ii) It is submitted that though the respondent State have taken a plea that as per policy resolution dated 21.11.2006, Annexure B to the counter-affidavit, ordinarily an incumbent/officer of the Animal Husbandry and Fisheries Department is to be transferred to another Division/Commissionary but they have not followed the yardstick uniformly in the case of the respondent No. 3, who has been posted at the same place at Dhanbad though he is also serving for more than six years rather 24 years at the same place. It is submitted that the respondents have, therefore, not only violated the order of the Court by undertaking a fresh transfer of the petitioner but also at the same time not following the laid down yardstick uniformly in the case of all similarly situated persons. He has placed reliance upon Annexure 2 to the rejoinder, which is the minutes of the Departmental Establishment Committee meeting dated 30.6.2014 based upon which such impugned transfer order was issued. By referring to the minutes of the meeting in relation to the petitioner and the private respondent, who are at serial Nos. 5 and 9 respectively, it is submitted that the Establishment Committee recommended for transfer of the petitioner as District Animal Husbandry Officer, Ranchi and the respondent No. 3 as District Animal Husbandry, Godda having found that both of them have remained beyond six years at the same place. However, while the petitioner has been transferred to Simdega as DHO, the private respondent has been posted at Dhanbad itself where he was continuing since long. It is submitted that the impugned order of transfer needs to be quashed. The notification of transfer dated 22.06.2013 in WPS No. 3760/2013 has been challenged as being punitive in nature on the basis of certain allegations though no show-cause or proceedings have been held to prove the same against him."

4. Learned counsel for the respondent-State in both the writ petitions have submitted that the first impugned order of transfer was issued in the year 2013 on the complaints that he has remained at the same place for a long time, much beyond 6 years. The decisions were taken by the Establishment Committee and thereupon he was transferred to Lohardaga. The second transfer order has also been issued on the recommendation of the Departmental Establishment Committee having been found that the petitioner has remained for more than six years at the same district. In support of second order of transfer counsel for the respondent-State have pointed out the period of posting of the petitioner at Dhanbad. From paras 6 and 7 of their counter-affidavit, it appears that the petitioner has been posted in the same district in 1982 as Tourism Veterinary Officer, Bhojudih, Dhanbad and is serving in the same district for last 30 years except the period from 5.8.2001 to 20.1.2003 as a Tourism Veterinary Officer,

Jadugoda, Jamshedpur.

5. In such circumstance, counsel for the respondents, therefore, has sought to justify the present impugned order of transfer of the petitioner relying upon the policy resolution dated 21.11.2006, Annexure B to the counter affidavit. However, learned counsel for the respondent-State while dealing with the case of the private respondent has submitted that the recommendation of the Establishment Committee is not final and it is the decision of the competent authority upon which one or other officer concerned is posted at a particular place. Therefore, though the Establishment Committee may have recommended the name of respondent No. 3 to be posted at Godda as DHO but the competent authority has taken a final decision in the matter for posting him at Dhanbad. Reliance has been placed on the judgment in the case of Sheonath Singh Gonjhu Vs. The State of Jharkhand and Others in support of the aforesaid contention.

6. Counsel for the respondent No. 3, by referring to his rejoinder, has submitted that the present petitioner has remained on the same place of posting for a tenure of 32 years except for a period from August, 2001 to January, 2003 when he was posted as T.V.O. Jadugoda, Jamshedpur, Annexure-R/3 (A) to the counter-affidavit. The different notifications of posting of the petitioner and the private respondent have been evidenced. Learned counsel for the private respondent has submitted that the present private respondent has not remained throughout at the same place of posting at Dhanbad as per chart, at para 9 to the rejoinder as also Annexure-R/3 (A) to the counter-affidavit. However, he has not been able to dispute that the private respondent No. 3 has also remained at the same place of posting at Dhanbad for more than six years as would appear from the chart, at para 9 i.e. from 16.12.2005 till issuance of the impugned notification dated 30.6.2014.

7. Learned counsel for the respondent No. 3 has also relied upon the same judgment in the case of Sheonath Singh Gonjhu Vs. The State of Jharkhand and Others to submit that though the Establishment Committee may have made recommendation for posting at a particular place but the competent authority has chosen to post him at a different post as District Animal Husbandry Officer, Dhanbad from his earlier post of Veterinary Surgeon, Dhanbad.

8. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned notification. From the face of it, in the first place, it may be observed that the conduct of the State-respondents in issuing the impugned notification of 30th June, 2014, despite an interim order passed earlier by this Court in WP(S) No. 3760/2013 on 4th July, 2013, is not proper and bordering on being contumacious. Respondents should have taken leave of the court before effecting any further order of transfer moreso when there was a specific interim order passed in the case of the petitioner earlier.

9. Be that as it may, the said act of the respondents shall not distract this Court from examining the issue raised in the writ petition on merits. On careful

consideration of the rival submissions of the parties and the materials on records including the recommendation of the Establishment Committee as has been brought on record by the petitioner through his rejoinder, it is evident that both the petitioners and the private respondent have remained for more than six years at the same place in Dhanbad. The respondent-State have relied upon a departmental resolution of 21st November, 2006 in order to submit that an employee of the basic grade of the Animal Husbandry and Fisheries Department, who has remained in one Division/Commissionary for a period of six years, is required to be posted at a different Division or Commissionary.

10. In the instant case by such yardstick, the transfer order of the present petitioner from Dhanbad to Simdega seems to be justified. However, there is no justification for transfer of the private respondent in the same place though on a different post, even if it has been found by the establishment committee that he had remained for more than six years at the same place in Dhanbad, may be on a different post.

11. Ordinarily in a matter of transfer, this Court in exercise of judicial review, is not supposed to go into the question where one or the other employee/officer of the State is to be transferred and posted. However, if a yardstick is applied by the respondents upon a conscious policy decision, it is expected that it must apply uniformly to all similarly situated persons so that its implementation may not result in violation of the principles of equality as contained under Article 14 of the Constitution of India and also give rise to cases of individual heart burning.

12. In these circumstances, though the impugned order of transfer has been issued without seeking leave of the Court but since the petitioner has remained in the same district for a number of years at least more than six years, the impugned order of transfer of the petitioner does not require any interference. However, at the same time it is to be observed that since the respondents have issued the order of transfer without seeking leave of the court, which is neither proper nor expected from the State-respondents, this Court, therefore, deems it fit to impose a cost of Rs. 15,000/- on the State-respondents to be deposited in the Jharkhand State Legal Services Authorities within three weeks from today.

13. The respondent No. 3, however, at the same time has been transferred and posted at the same place when the Establishment Committee has found that he has remained beyond six years at the same place. Such action of the respondents does not seem to be justified on the touchstone of equality and is also not in conformity with their own policy resolution dated 21.11.2006, Annexure B to the counter-affidavit. Therefore, the transfer of the respondent No. 3 as District Animal Husbandry Officer, Godda being in the teeth of the Government Resolution dated 21st November, 2006, causing disparity in treatment vis-?-vis similarly situated other persons, the same cannot be approved in the eye of law, the same is, therefore, declared arbitrary and illegal. The respondent-State has failed to show any special reasons to post him at the same place despite recommendation of the Establishment Committee to the

contrary. In such circumstances, the State-respondents would issue a fresh order of transfer in respect of respondent No. 3, in conformity with their own resolution within a period of six weeks. Since the present impugned order of transfer has superseded the earlier order of transfer of the petitioner dated 22.6.2013 challenged in WP(S) No. 3760/2013, the said writ petition appears to have been rendered infructuous and, accordingly, it is disposed of as such. Moreover the State-respondents have also stated that it was effected as the petitioner had remained at the same district for a very long period beyond six years which was brought to the notice of the Department. Therefore, the said order of transfer in no way will amount to be punitive in nature as alleged by the petitioner.

14. The present writ petition being WP(S) No. 3389/2014 stands disposed of in the manner, as indicated hereinabove. I.A. No. 4287/2013 in WP(S) No. 3760/2013 also stands disposed of.