

(2019) 07 PAT CK 0345

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13940 Of 2019

Amir Singh

APPELLANT

Vs

State Of Bihar Through Principal Secretary And Ors

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Citation : (2019) 3 PLJR 992

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Tej Bahadur Singh, Umesh Kumar Mishra, Madhaw Prasad Yadaw, Rajesh Kumar Sinha

Final Decision : Dismissed

Judgement

1. The petitioner has challenged the order dated 28.06.2019 contained in Memo No. 518 (ii) issued under the signature of the District Magistrate, Siwan whereby the petitioner along with others have been transferred from one block to another.
2. The petitioner has been transferred from Goriyakothi in the district of Siwan to Maharajganj in the same district as Panchayat Secretary.
3. The petitioner has challenged the aforesaid transfer on three grounds viz. though the order of mass transfer has been passed in the month of June but without any approval from an authority which is higher than the issuing authority; secondly, the petitioner has not completed three years at Goriyakothi and therefore he ought not to have been transferred on the ground of administrative reasons and thirdly, there is a Finance Department circular that a Panchayat Secretary who is entrusted with completion of any project be allowed to continue at the aforesaid block till the time the project is completed.
4. Apart from this, Mr. Tej Bahadur Singh, learned senior advocate for the petitioner has also stated that only to prevent this order from being scrutinized by a Court of law, a generic term of administrative reason has been used in the order for the purposes of insulating it from any judicial test.

5. All the aforesaid grounds have been noted in this order for the purposes of rejecting the same.

6. The mass order of transfer of Panchayat Secretaries from one block to another has been passed in the month of June as ordained in the circular of the Government. The approval of a higher authority is only required if such orders of transfer are issued and effected in other months than June. As far as practicable, it has to be seen that a person be allowed to remain at one place for three years. This is no absolute rule and for administrative reason, such rule could be relaxed.

7. The prefatory note attached to the list of Panchayat Secretaries who have been transferred from one block to another clearly indicates that such order of transfer has been issued taking into account various factors viz. request of some of the Panchayat Secretaries, duration for which they have remained at one place and other administrative reasons.

8. All these grounds coalesce for administrative convenience which cannot be questioned specially when several persons along with the petitioner have been transferred to a difference place in the same district. No mala fides can be alleged against this kind of a transfer, specially with respect to the petitioner.

9. That petitioner has not completed three years at Goriyakothi may not be relevant if for other administrative reasons, the authority is of the opinion that the transfer would serve the interest of administration in a better manner.

10. The other ground which has been raised by the petitioner is that the petitioner had earlier served as a Panchayat Secretary at Maharajganj also has no substance. There might not have been any complaint against the petitioner at Maharajganj. For him to be chosen to work in same place where he worked earlier cannot be said to be infected by any specious/ mala fide reasons.

11. Mr. Singh, learned senior advocate has drawn the attention of this Court to a paragraph in a Division Bench judgment delivered by this Court in Shiv Kumar Singh versus Bihar State Electricity Board 1992(1) PLJR 766 which reads as hereunder:-

"7. Before we part with this case, we may add that Board shall show more concern to the rule of law and respect the conditions of service of its employees by showing obedience to the principle of law that all employees should be subjected to same or similar considerations. If an employee who stayed at one station for a longer period is not transferred but one who is posted for one week or two shifted to another station a sense of frustration would start percolating and affecting the vitals of the service establishment. When we say so, we do not intend to restrict the powers of the competent authority in the Board to transfer its officers for the reason of administration or in the public interest at any time. But in all cases of transfer in the public interest or for the reason of administration there has to be some reason of the public interest or for administration in existence. Without any such reason of administration or public

interest demanding a premature transfer the order would be bad in law."

12. The Division Bench has made such en passant observation, keeping in mind that the ground of administrative reason ought not to be used recklessly and only for the purposes of insulating the orders of transfer from any judicial scrutiny. While making such parenthetical remark with respect to the mode applied by the authorities in transferring persons within a short span of time, it has been held that such action by the administrative authorities should be eschewed.

13. There is no complete ban/proscription on transferring any person within three years on administrative grounds.

14. The administrative grounds are not to be recounted in detail. It is the discretion of the authority as the employer only knows best where to place an employee for effective administration of justice.

15. No good ground has been made out by the learned advocate for the petitioner to make out any case for interference of this Court.

16. The petition is dismissed.