

(2020) 01 PAT CK 0256

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21464 Of 2019

Ashok Kumar Choudhary And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0256

Hon'ble Judges : Anjana Mishra, J

Bench : Single Bench

Advocate : Rajeev Kumar Singh, Priya Ranjan Singh, Vipin Kumar Singh

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

The petitioners, twelve in number, seek interference of this Court by issuance of a writ of certiorari for quashing Memo No. 2164 dated 18.10.2019 issued by the Additional Chief Secretary, Labour Resources Department, Bihar, Patna, whereby and whereunder transfer of petitioners, who are Instructor and Group Instructor in I.T.I. has been cancelled with immediate effect and to direct the respondents not to disturb the petitioners from discharging their duties on their respective posts and places as Instructor and Group Instructors in I.T.I.

Learned counsel for the petitioner submits that pursuant to an earlier order of transfer contained in Annexure 2 and 3 dated 30.06.2019 in Memo No. 1426 and 1427 of the same writ, the petitioners were transferred and posted at different place. Aggrieved by the aforementioned orders, some of the transferees which included the present petitioners made an application for re-consideration of their cases of transfer and the Labour Resources Department vide its order dated 26.07.2019 contained in Office Order No. 1591 was pleased to revise the transfer order of these petitioners. In pursuance of the order dated 26.07.2019 contained in Annexure-5, the petitioners were relieved from their respective posts and have

now joined their duties at their new places of posting as indicated in Annexure-5. Learned counsel for the petitioners submits that subsequent thereto the authorities have again revised the order of transfer vide Memo No. 2164 dated 18.10.2019 (Annexure-1) by which they have annulled the order of transfer contained in Annexure-5 and have now proceeded to relieve the petitioners from their places of posting and are compelling them to join the new places assigned to them vide Annexure-1. Learned counsel for the petitioner thus submits that the issuance of Annexure-1 is wholly illegal and arbitrary and seeks to create a situation where the petitioners are neither here nor there and the order of transfer have already been acted upon could not have been interfered with as they have now become inoperational having already been implemented by the respective petitioners.

Taking all such facts and circumstances as have been submitted by the petitioners and also taking note of the contention made in I.A. No. 1 of 2019, this Court vide order dated 20.12.2019 has ordered in the following terms:-

"By order dated 03.12.2019, the respondents were directed to file counter affidavit as it has been averred that an executed order of transfer was recalled within a short span of time.

No counter affidavit has yet been filed.

In that view of the matter, this Court directs that till this case is decided, the petitioners shall not be forced to join their new place of posting.

Re-notify on 13th of January, 2020 within first five cases, by which time counter affidavit must be filed."

Learned counsel for the petitioners thus submits that since the counter affidavit which has been filed in this case is wholly evasive and inconclusive and does not seek to answer any of the irregularities which have been pointed out by this Court, the impugned order is fit to be set aside and the petitioners be permitted to continue on their respective places of posting from which they have been purportedly relieved. He further submits that such an action on the part of the respondents is wholly without any rational and deserves to be deprecated.

Learned counsel for the State has pointed to a certain paragraph in the counter affidavit filed by the respondents wherein it has been stated that the aforementioned decision had to be taken in view of the fact that the petitioners had continued in their places of posting for over five years and, therefore, in view of the administrative policies which have been indicated in Annexure 'B' it was deemed necessary that the orders passed vide Annexure-5 be revised and the petitioners be sent to other places.

Having heard learned counsel for the petitioners and learned counsel appearing on behalf of the State, it appears that it is a settled position that an order of transfer already acted up cannot be revised as indicated in the judgments passed

in the case of Smt. Jyotsna Kumari Vs. State of Bihar and Ors. reported in 2000(2) P.L.J.R. 332. Paragraph No. 12 is being quoted hereinbelow:-

"12. Now it is a settled law that once an order of transfer issued and acted upon, it spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant."

As also in the case of Mahmood Azam Siddique & Ors. Vs. The State of Bihar & Ors. reported in 2000(3) P.L.J.R. 139. Paragraph No. 11 and 12 are as follows:-

11. It is a settled law that in the matter of appointment, on joining, the same stands accepted by the incumbents, but the appointment letters subsists till the employee retained in service and gets benefit out of such orders of appointment.

On the other hand, in the matter of transfer, once notification is acted upon, nothing subsists and the notification of transfer becomes redundant for all purposes.

12. In the aforesaid background, the order of transfer having become redundant, the question of rescinding such order does not arise.

Considering the ratio in the judgements and the stand adopted by the respondents being wholly without any rationale, this Court finds that the issuance of Annexure -1 is wholly against the settled principles of law and being misconceived deserves to be set aside.

Accordingly, it is directed that the impugned order contained in Annexure-1 bearing No. 2164 dated 18.10.2019 passed by Additional Chief Secretary, Labour Resources Department, Patna, is hereby quashed.

The petitioners are directed to continue in their respective places of posting pursuant to Annexure-5. It is also needless to say that they will be paid their salary from the dates, the same have been withheld.

The writ application stands allowed.