
(2015) 10 JH CK 0089
In the Jharkhand High Court
Case No : WP(S) No. 3978 of 2015

Ashok Kumar Choudhary

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Citation : (2015) 4 JLJR 393

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Rahul Kumar, for the Appellant; Chaitali C. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The transfer of petitioner by the order at Annexure-7 bearing memo No. 1532 dated 29.6.2015 from Community Health Centre, Seraikella Kharsawan to Additional Primary Health Centre, Chavlibasa, Chandil has been challenged on the ground that it was in teeth of the procedure prescribed under the circular at Annexure-1 dated 19.1.1973 without recommendation of any Establishment Committee.

2. Reliance has also been placed upon Clause-6 thereof to submit that seniority of the petitioner in the cadre of paramedical staff in the district of Seraikella Kharsawan as evident from Annexure-6 dated 31.10.2012 has not been followed. After filing of the counter affidavit he added further ground to the challenge stating that impugned decision is on the basis of complaints made as is evident from the proceeding of the Establishment Committee at Annexure-A bearing memo No. 1533 dated 29.6.2015. In further support thereof, it is also urged that proceedings have not been drawn in a regular manner. Memo number of the minutes at Annexure-A are of subsequent but of the same date to that of impugned order of transfer, Annexure-7. Moreover, the Senior Additional Chief Medical Officer, Seraikella Kharsawan has not signed the minutes though her presence was shown in the proceeding. He has also referred to the letter of the

Senior Additional Chief Medical Officer, Seraikella Kharsawan at Annexure-8 bearing letter No. 171 dated 4.9.2015 wherein she has complained to the Director in Chief, Health Services, Jharkhand, Ranchi that decision at the district level in respect of Classes-III and IV employees are being taken without constitution of the Establishment Committee and signature is being sought on such ante dated proceeding. She is being victimized for refusing to sign such proceeding. Learned counsel for the petitioner submits that impugned transfer would be stigmatic in nature and based upon certain complaints without issuing any notice or show cause to him. It is also urged that Medical Officer of the Community Health Centre, Seraikella Kharsawan has through letter dated 13.8.2015 stated that replacement of the petitioner without any substitute would create difficulties in working of the said office (Annexure-10). Learned counsel for the petitioner has, therefore, sought quashing of the impugned transfer.

3. Learned counsel for the respondent-State has at the outset sought to dispel the first ground urged by the petitioner by referring to the proceeding at Annexure-A dated 29.6.2015 and submits that the impugned transfer order is based on the decision of the District Establishment Committee. It is stated on her behalf that Hon"ble Minister of Health during inspection of the Community Health Centre, Seraikella Kharsawan had been apprised of certain deeds of the petitioner by other serving employees in delay in payment of salary etc. This was also considered by the Establishment Committee and show cause was also issued upon him vide letter No. 1268 dated 15.5.2015 as to why action be not taken against him for indiscipline in not processing the pending matter of retired/deceased employee. It is submitted that it is open to the employer, whether to take any disciplinary action on such complaint after issuing show cause or to place the same employee in a different post at the different place for administrative reasons. That discretion to the employer cannot be denied. It is also urged that petitioner has completed three years of posting at the said Community Health Centre at Seraikella Kharsawan. It is submitted that petitioner had not handed over the charge of his previous post which resulted in the deputation of Executive Magistrate for preparing inventory at the previous place of posting as would appear from memo No. 241 dated 10.5.2012. Reliance of the petitioner on the letter of Senior Additional Chief Medical Officer, Seraikella Kharsawan dated 4.9.2015, Annexure-8 is being answered through statements made in the supplementary counter affidavit filed on their behalf. Learned counsel for the State refers to the letter No. 112 dated 26.6.2015 of the Additional Chief Medical Officer, Seraikella Kharsawan requesting for leave on 28.6.2015 and 29.6.2015 to the Regional Deputy Director, Health Services, Kolhan Division, Chaibasa and also seeking permission for remaining out of headquarters from afternoon of 27.6.2015 itself. Another document enclosed to the supplementary counter affidavit which is said to log book attendance of the Medical Officers in the said office is referred to show that on 29.6.2015, the said Dr. Meena, Additional Chief Medical Officer, Seraikella Kharsawan was on casual leave. Attendance is not marked. It is submitted that on 4.9.2015 when she has

purportedly sent a letter at Annexure-8 making certain allegations that Meeting of the Establishment Committee are not being held in the matters of Classes-III and IV employees, she had been directed to attend the workshop at IPH, Auditorium, Namkum convened by the Director, Health Services on the subject of family planning. Letter containing the direction to the said officer issued by the Civil Surgeon-cum-Chief Medical Officer, Seraikella Kharsawan bearing memo No. 1928 dated 2.9.2015 is also enclosed to Annexure-G series. By referring to the letter No. 168 dated 2.9.2015 of the same officer addressed to the Regional Deputy Director, Health Services, Kolhan Division, Chaibasa, it is further submitted that she had proceeded on leave from 4.9.2015 till 12.9.2015 for undertaking medical treatment. Based upon these documents, the very presence of the said officer on 4.9.2015 at Seraikella Kharsawan is being disputed by the respondent. It is stated that Meeting of the Establishment Committee was held in the presence of rest of members, who have signed in the minutes as is apparent from Annexure-A. It is submitted that Establishment Committee is duly constituted in terms of the notification dated 3.3.2015 of the Health Department, Annexure-B comprising five Medical Officers, four of them were definitely present in the said proceeding. Learned counsel for the respondent submits that neither is the impugned transfer within the normal of 3 years tenure nor without recommendation of the Establishment Committee calling for interference. The impugned order also does not reflect any stigma upon the petitioner though all procedural requirements have been undertaken after complaints received by the Hon'ble Health Minister during inspection of the said Community Health Centre in respect of the petitioner. Therefore, in the matter of transfer, which is an incidence of service, no interference should be made as neither it is without jurisdiction or mala fide or contrary to the Rules.

4. I have considered the rival submissions of the parties and the background material facts noticed hereinabove. The challenge to the impugned order of transfer was based upon the ground that it has been made without recommendation of the Establishment Committee. This ground has apparently been answered by enclosing the proceedings of the Establishment Committee on the part of the respondents, which though comprises of 5 officers, but has been drawn in the presence of four officers namely Civil Surgeon-cum-Chief Medical Officer, Seraikella Kharsawan, the Deputy Superintendent of Sadar Hospital, Seraikella, District Malaria Eradication Officer, Seraikella Kharsawan and District Tuberculosis Officer of the same district. The Additional Chief Medical Officer was on leave on the said date as per her own application enclosed as Annexure-G series to the supplementary counter affidavit and therefore, proceeding did not bear any signature of her presence.

5. Reliance of the petitioner upon letter dated 4.9.2015, Annexure-8 issued by the Additional Chief Medical Officer is, therefore, of no aid to render the proceeding of the Establishment Committee as irregular or as an ante dated document. As a matter of fact, it appears from the enclosure at Annexure-G series that the said officer was deputed to attend training programme on

4.9.2015 at Namkum conducted by Health Department and thereafter on her application, she has proceeded for leave till 12.9.2015. Therefore, petitioner cannot seek reliance upon the absence of the said officer in the proceeding of the Establishment Committee. The allegation relating to absence of any recommendation of the Establishment Committee in leading to issuance of the impugned order of transfer is, therefore, not made out. On the other hand, though the proceeding refers to the inspection of the Health Minister of the Community Health Centre, Seraikella Kharsawan where such complaints were made in respect of discharge of duty against the petitioner by other employees, those incidences have been duly followed by issuance of show cause notice upon the petitioner as is evident from letter Nos. 1263 and 1268 dated 14.5.2015 and 15.5.2015 respectively. The respondent employer may not have chosen to take any disciplinary action after issuance of the said show cause and submission of reply on the part of the petitioner. However, for administrative reasons, if the petitioner has been posted at another place after due deliberations by the Establishment Committee and on completion of his tenure of 3 years at the previous place of posting, the impugned order cannot be said to be bad in law or on facts on those counts.

6. Transfer being an incidence of service, an employer has the discretion to post one or another employee at one or the other place. Therefore, this Court in exercise of its powers under judicial review should not substitute the decision of the employer as to the place of posting of the petitioner.

7. Respondents would take care of the eventuality of the vacancy occurred on the transfer of the petitioner by ensuring the handing over of the charge to any other competent employee in the said place. As an upshot of the reasoned recorded and the detailed discussion made hereinabove, petitioner has failed to make out a case for interference in the impugned transfer order. The writ petition is dismissed accordingly. Interim order stands vacated.