
(2006) 08 JH CK 0108

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 52 of 2005

Braj Kishore Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : (2007) 1 JCR 90

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Dilip kumar sinha, J

Bench : Division Bench

Advocate : V.P. Singh and Ashok Kumar Sinha, for the Appellant; Sheela Prasad. G.P. IV and Shailesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The present appeal has been directed against the judgment dated 24.12.2004 passed by the learned Single Judge in W.P.(s) No. 4730 of 2004 whereby and whereunder the writ petition of the appellant was dismissed and the transfer order impugned of the appellant was held as good.

2. The appellant had preferred the writ petition before the learned Single Judge for quashing the office order vide memo No. 918 dated 3.8.2004 issued by the Respondent-Executive Engineer, whereby the appellant was ordered to be relieved from the post of Accounts Clerk, Road Division, Jamshedpur and was directed to join at newly established road circle, Daltonganj. The said transfer was made pursuant to the direction vide office order No. 33 dated 23.6.2004 issued by the Respondent-Chief Engineer on the vacant post of the Accounts Clerk in road circle at Daltonganj. It is evident that the Respondent-Under Secretary, vide his letter No. 1998 dated 18.6.2004 had directed the Respondent-Chief Engineer to transfer the appellant from his present place of posting in view of the letter dated 12.6.2004 issued by the Respondent No. 7, Pradeep Kumar Balmuchu, M.L.A (Annexure-3).

3. The appellant raised the point that he was transferred under the political

influence of the respondent No. 7 with the intention to place his relative respondent No. 6, Bablu Banra, as Junior Accounts Clerk in the office of the Executive Engineer, Road Construction Department, Jamshedpur so that he may work as Divisional Cashier inspite of being much junior staff in the Division and that by the said transfer the seniority of the appellant was affected by his placement out side his cadre without valid reasons and his consent.

4. The learned Counsel for the appellant submitted that the said authorities should not have been allowed to take such decision for transfer by single isolated order on the instance of the political person i.e. respondent No. 7 and not for any other reason much less any administrative exigency. The order was against extraneous consideration with the intention to remove the appellant from Jamshedpur enabling the respondent No. 6 to take as Divisional Cashier, who is the brother-in-law of the respondent No. 7, an M.L.A

5. In the present case, we find that there is no documentary evidence on the record to suggest that the divisional cadre has a different cadre than a circle cadre. The circle cadre is controlled by the Superintending Engineer whereas Divisional Cadre is controlled by the Executive Engineer.

6. Appendix-A of part (ii) of the Jharkhand Service Code 2001 has given full power to the Chief Engineer of Public Works (including Irrigation Department) to transfer all the Non-Gazetted servant and many else employed in the Public Works Department. The appellant was transferred vide order of the Chief Engineer, Public Works Department vide office order No. 33 dated 23.6.2004 communicating his transfer as Accounts Clerk Road Division, Jamshedpur to Road Circle, Daltonganj on the vacant post of the Accounts Clerk with immediate effect, a copy of which was forwarded to the appellant (Annexure-2). Pursuant to that, the appellant was relieved by the order of the Executive Engineer, Road Construction Department, Road Division, Jamshdpur, (Annexure-I). The above annexures do not indicate that the appellant was transferred from Jamshedpur Division to Daltonganj Circle against extraneous consideration.

7. Similarly from perusal of the Annexures 6 and 6/A to the L.P.A. which are the letters of the respondent No. 7, (Pradeep Kumar Balmuchu, M.L.A) addressed to the Superintending Engineer are simple communication that undue pressure was being made upon the Executive Engineer to allow the appellant to take charge of the cashier who had misappropriated the salary and G.P.F. etc. to the tune of Rs. 6,23,379/-. Anguish was expressed that no departmental proceeding was contemplated against the petitioner whereas one Ram Chandra Prasad Singh Accounts clerk of the said department was put under suspension for seven years for a meager sum of Rs. 3,100/-. It was requested therein to ensure the payment of the salary and G.P.F. w.e.f. 5.11.1996 and to take effective step for initiation of the departmental proceeding against the appellant.

From careful perusal of the aforesaid annexures we do not find any malafide on the part of the respondent No. 7 who has simply requested the Superintending

Engineer to take appropriate step against the appellant who had misappropriated the salary and G.P.F amount of the employees and has further requested to initiate the departmental proceeding against the appellant. There is no whisper in both the letters to put the respondent No. 6 incharge of cashier of the Road Division, East Singhbhum, Jamshedpur and therefore, the appellant failed to prove any malafide in his transfer order (Annexures 1 and 2).

8. It is evident from the record that Sri. B.K. Singh (appellant) the then cashier Road Division, Jamshedpur, was punished by holding two increments in the salary with caution to the concerned person not to assign such work in future which involved transaction of the Public money pursuant to a departmental proceeding for the charge of the misappropriation of public money to the tune of Rs. 6,23,379/-.

The learned Single Judge in W.P.(S) No. 4730 of 2004 observed that transfer is incidence of service which can be made for administrative reasons. The appellant failed to prove malafides in his transfer from division to circle that it was sequel to the political influence or interference. The seniority of the appellant has been protected by the authorities as per the annexure-D of the counter affidavit. It is no where whispered or can be gathered from the documents produced either on behalf of the appellant or filed with the counter affidavits that the said transfer was made in the interest and benefit of the respondent No. 6, Bablu Banra. Junior Accounts clerk in the office of the Executive Engineer, Road Construction Department, Road Division, Jamshedpur as against extraneous consideration.

9. We find that the learned Single Judge vide order impugned has rightly observed that the transfer of the appellant cannot be held to be bad and if the respondent No. 6 was holding a post which he should not hold, the Secretary-cum-Commissioner Road Construction Department, Jharkhand (Respondent No. 1) was directed to look into the matter and to pass an appropriate order within time framed. On the other hand, the appellant was directed to obey his transfer order within four weeks of the order.

10. We do not find any infirmity or illegality in the impugned order passed by the learned Single Judge, hereinabove. We, therefore, find that no ground is made out to interfere with the impugned order passed by the learned Single Judge in W.P(C) No. 4730 of 2004. There being no merit, this appeal is dismissed.

S.J. Mukhopadhaya, Acting C.J.

11. I agree.