

(2009) 01 PAT CK 0119
In the Patna High Court
Case No : CWJC No. 17064 of 2008

Brajendra Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Citation : (2009) 2 PLJR 504

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Pramod Mishra and Shyamal Kr. Jha, for the Appellant; Shashi Shekhar, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsel for the petitioner and the State. Petitioner has filed this application for quashing the order, contained in Memo No. 14714, dated 24.9.2008, issued by the Director-in-Chief, Health Services, Bihar, Patna, whereby the petitioner has been transferred from the post of Clerk-cum-Store Keeper from the office of the Civil Surgeon-cum-Chief Medical Officer, Madhepura, to the office of the Civil Surgeon-cum-Chief Medical Officer, Buxar. The ground, which has been taken by the petitioner challenging the impugned order, is that the service of the petitioner belongs to the district cadre. Any person, who is holding the post in district cadre, can be transferred as per the Rules on his request or representation as the person holding district cadre being transferred from one district to another loses his seniority in the transferred district. There was no such request or representation on behalf of the petitioner. The petitioner has been transferred making some allegation that he has not cooperated discharging his duty in flood. Counsel for the petitioner submits that in case of such allegation it was mandatory that opportunity should have been afforded to the petitioner to explain, but, that was not done.

2. Counter affidavit has been filed on behalf of respondent No. 3 admitting this fact that no opportunity was allowed to the petitioner before transferring him

from one district to another district on account of some allegation. However, in paragraph 6 of the counter affidavit reference of Letter No. 11 (Ni.Pra), dated 20.1.1991, has been given. It is stated in the counter affidavit that as per this letter the Director-in-Chief is authorized to transfer an employee in the district cadre from one district to another district.

3. I fail to understand that how this stand has been taken in the counter affidavit when the petitioner in paragraph 12 of the writ petition has specifically mentioned about a decision reported in Md. Kalimullah and Others Vs. State of Bihar and Others, whereby this letter of the Government has already been declared illegal. This shows that how counter affidavits are prepared in the office of the State Counsel. The State-respondent have not come forward with any specific ground on the basis of which the impugned order can be held to be sustainable. Accordingly, the impugned order, contained in Memo No. 1471(4), dated 24.9.2008, issued by the Director-in-Chief, Health Services, Bihar, Patna, is quashed. This application is allowed. Petitioner has already joined at the transferred post, as such, the respondents are directed to immediately issue an order in favour of the petitioner reverting him back to his original place of posting. The order must be issued in favour of the petitioner forthwith.