

(2013) 10 JH CK 0003
In the Jharkhand High Court
Case No : W.P. (S) No. 5394 of 2013

Chandramouli Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 2 AJR 176

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner is aggrieved by the office order dated 27th August, 2013 issued under the Signature of the Respondent No. 2 - The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Department of Rural Works, Government of Jharkhand, Ranchi and communicated to the petitioner vide Memo No. 2119 dated 27 August, 2013 (Annexure-3), whereby he has been transferred from his present place of posting at Works Section, Masalia Works Division, Dumka and posted in Works Section, Chakulia, Works Division, Jamshedpur, East Singhbhum. By the same notification, the private respondent (Respondent No. 4) has been posted in his place.

2. According to the petitioner, he had submitted his joining at the present place of posting at Dumka pursuant to the office order contained in Memo. No. 137 dated 15 December, 2012 (Annexure-1). It is submitted on behalf of the petitioner that the normal tenure of posting of any such Government employee under the policy of the State Government is three years. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner has been taken aback by the impugned notification issued only after eight months of his joining at the present place of posting. It is further submitted on behalf of the petitioner that the impugned notification of transfer has been issued on the basis of the recommendation of the Hon'ble Minister of Rural Works Department,

Government of Jharkhand, as would appear from Annexure-2 dated 26 August, 2013. It is further submitted on behalf of the petitioner that the private respondent has been posted in the same works division, Dumka for the last seven years and he was relieved to join at Works Section, Chakulia by office order No. 137 dated 15 December, 2012. It is submitted that after having remained at the same place for seven years and after being relieved in December to join at Chakulia in January 2013, he has once again been posted at the same place by the same notification i.e. at the Works Section, Masalia Works Division, Dumka. It is submitted by the learned Senior Counsel for the petitioner that the impugned notification has been issued without the normal process of recommendation of the Establishment Committee which is mandatory as per the notification of 25th October, 1980 (Annexure-4). It is further submitted that no administrative grounds are also made out for such transfer. Learned Senior Counsel also submits by drawing attention of this Court to Annexure-A to the counter affidavit dated 6th September, 2013 that the Executive Engineer, Rural Works Department, Works Division, Dumka has been asked to explain by the Engineer-in-Chief-Additional Commissioner-cum-Special Secretary, Rural Works Department as to the circumstances in which the private respondent who was posted at Chakulia, has been permitted to join on the same day of the notification i.e. 27 August, 2013, though two places are separated by a large distance of more than 200 km. Learned senior counsel therefore submits that the impugned notification is bad in law and required to be interfered by this Court in writ jurisdiction.

3. In the instant case, counter affidavit has been filed on behalf of the respondent State wherein the petitioner's objection that no Establishment Committee meeting was held, has not been disputed. Learned counsel for the State submits that the impugned transfer has been made on administrative grounds and the petitioner has also been relieved to join at his new place of posting. As per the learned counsel, the transfer has been made for the benefit of public at large on administrative grounds.

4. It is worthwhile to point out that the relevant records relating to issuance of the impugned notification were summoned by this Court on the last date and is in the custody of the learned State Counsel. The aforesaid fact that no Establishment Committee meeting was held for recommending such transfer in August 2013, is not in dispute.

5. Learned counsel for the private respondent, on the other hand, submits that the impugned notification has been given effect to and he has also joined at his transferred place. It is further submitted that the learned Division Bench of this Court in the case of Laljit Prasad Sinha v. The State of Jharkhand in L.P.A. No. 72/2013, has also observed that even if the guidelines are not strictly followed then also, the Court under Article 226 need not correct that illegality when it is of not much consequence and causing no harm to even applicant/aggrieved person/petitioner. Much rigidity cannot be given to the adherence to the transfer policies

in each and every case.

6. Learned Senior Counsel for the petitioner has relied upon the judgment of the learned Division Bench in the case of Uttam Kujur Vs. State of Jharkhand and Others, . Learned Senior Counsel for the petitioner has also relied upon the judgment of the Apex Court in the case of Rajendra Roy Vs. Union of India (UOI) and Another, . It is submitted on his behalf that though the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees, but on that score, the order of transfer is not liable to be struck down, unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification. It is submitted that in the instant case, prescribed guidelines have not been followed and no justification has been disclosed for such transfer on administrative grounds when private respondent had been transferred back to the same place after remaining for seven years at the same place under the Works Division of Dumka.

7. I have heard learned counsel for the parties and gone through the impugned notification as also other relevant materials brought on record. From the impugned notification, it is apparent that it has been issued beyond the normal period of transfer and posting i.e. May-June and November-December of each year, as per the policy laid down in the notification dated 25 October, 1980, so far as the transfer and posting of the State Government employee are concerned. Relevant paras-A and C which are relevant for determination of the present controversy are quoted hereunder:

(A) General Policy regarding transfer and posting.--Transfer and postings will generally be done twice, i.e. in May-June, November-December of each year:--

Provided that in special circumstances, e.g., death, illness, vacancy or other administrative reasons transfer and posting could be made at any other time subject to the following conditions:--

(i) in respect of officer whose transfer/posting is done with the approval of Minister or by Council of Ministers, specific prior approval of the Chief Minister has to be obtained; and

(ii) in respect of such officers and Government employees whose transfer and posting is done by subordinate officers under delegated powers of transfer, specific prior approval of the immediate superior officer is obtained.

(2) The duration of posting on any post and at any particular place will generally be for a period of 3 years. For some post or places, the period of posting may, however, be kept for 2 years which should be specified by the departments by Standing Orders.

(3)

(C) Formation of Establishment Committee.--(1) An Establishment Committee

should be formed for each Department with the approval of the Departmental Minister for recommending transfer/posting of such officers whose transfer and posting is made by the Government. The Committee will consist of the following officers;--

(i) Commissioner and Secretary.

(ii) Seniormost Head of Department.

(iii) One Special Secretary/Additional Secretary.

(iv) Suitable senior most officer of the Scheduled Caste/Scheduled Tribe. (If such a Scheduled Caste/Scheduled Tribe Officer is not available in the Department a suitable officer nominated by the Chief Minister through the Personnel and Administrative Reforms Department).

The Minister-in-charge shall frame at the beginning guideline principles to be observed by the Establishment Committee. In the same manner guideline principles shall be framed for the heads of Department with the approval of the Departmental Minister. After the Career Management Scheme has been prepared by the Department and approved by the Minister the guidelines should be modified to bring in line with the Career Management Scheme.

2. An Establishment Committee should be constituted by the Department for transfer/posting at the level of the Head of Department which shall consist of two senior officer subordinate to him and an officer of the Scheduled Castes/ Scheduled Tribes, in addition to the Head of Department.

3. The department shall also constitute an Establishment Committee at the level of the Head of office which will be presided over by the Head of office and a minimum of three members and maximum of five including a Scheduled Castes/ Scheduled Tribes member.

8. It is apparent that the impugned notification has been issued pursuant to a letter of the Hon''ble Minister of the Rural Works Department addressed to the Principal Secretary of the same department, inter-alia directing him to effect the transfer of the petitioner as also the private respondent at the places indicated therein. The respondent State has not disputed the contention of the petitioner in the counter affidavit that no Establishment Committee meeting was held prior to issuance of the impugned notification, nor the records which are in the custody of the counsel for the State reveal that any Establishment Committee meeting was held as such recommending for such a transfer. The stipulation contained in the transfer/posting policy of the State Government dated 25 October, 1980, clearly lays down that in special circumstances beyond the period of May-June or November-December, in case of death, illness, vacancy or other administrative reasons, transfer and posting could be made at any other time subject to the conditions that in respect of officer whose transfer/posting is done with the approval of Minister or by Council of Ministers, specific prior approval of the Chief Minister has to be obtained. In the instant case, it is not disputed that no such

approval of the Hon''ble Chief Minister has either been obtained. On the other hand, the private respondent admittedly was posted under the Works Division, Dumka for the last seven years till he was transferred in December 2012 and posted at Chakulia Works Division, Jamshedpur where he submitted his joining in January 2013. Within eight months thereafter, the private respondent has been transferred to the same works division at Dumka in place of the petitioner by the impugned notification and that too, on the basis of the recommendation of the Hon''ble Minister of the concerned Department without following the procedure of recommendation of the Establishment Committee. Annexure-A to the counter affidavit issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department shows that in the matter of joining submitted by the private respondent there on the same day and in quite haste, the Executive Engineer has been asked to explain the circumstances. When it was also indicated that the petitioner was granted 3 days time to hand over the charge and such act is also in violation of Rule 255 of the Service Code. Though the order has been given effect to, but in view of the judgment relied upon by the petitioner in the case of Uttam Kujur (supra), in the background of aforesaid facts and circumstances, the whole decision making process has been found to be vitiated, the illegality goes to the root of the notification, it cannot be wiped out by joining of the private respondent. The impugned notification is therefore not proper in the eye of law. Accordingly, the impugned notification contained in Order No. 137 and Memo No. 2119 dated 27th August, 2013, so far as it relates to the present petitioner and the respondent No. 4, are quashed.

The writ petition is allowed in the aforesaid terms. I.A. No. 6622/13 stands disposed of.