

(2014) 11 PAT CK 0070

In the Patna High Court

Case No : C.W.J.C. No. 14802 of 2014 and I.A. No. 7153 of 2014

Dayanath Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Bihar Police Act, 2007 — Section 10, 10(2)
Constitution of India, 1950 — Article 226

Citation : (2015) 1 PLJR 637

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Imran, Advocates for the Appellant; Sriram Krishna, Advocates for the Respondent

Judgement

Birendra Prasad Verma, J.—Heard the parties. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of Motihari District Order No. 944/14 dated 28.7.2014 (Annexure-3) passed by the respondent Superintendent of Police, East Champaran, Motihari, whereby the petitioner has been removed from the post of S.H.O., Raxaul w.e.f. 1.8.2014.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner was posted as S.H.O., Raxaul by Motihari District Order No. 1489/2013 dated 6.10.2013 (Annexure-1) passed by the respondent Superintendent of Police, East Champaran, Motihari and, accordingly, the petitioner joined the post on the same day, i.e. 6.10.2013. It is contended that in violation of the mandatory provisions of Section 10 of the Bihar Police Act, 2007 (in short "the Act") as also in violation of Standing Order No. 2/2011 (Annexure-6) issued by the respondent Director General of Police, Bihar, Patna, the petitioner has been subjected to arbitrary transfer/removal by the impugned order dated 28.7.2014 (Annexure-3). It is further contended that in view of Standing Order No. 2/2011, any transfer made prematurely by the Superintendent of Police is required to be

approved by the D.I.G. of that particular Region/Range. According to the petitioner, the impugned order of transfer made by the respondent Superintendent of Police was not approved by the D.I.G. of Police, Champaran Range, Bettiah by order/communication dated 12.9.2014 (Annexure-8 to the I.A. No. 7153 of 2014). It is pleaded that on these grounds the impugned order of transfer is liable to be set aside by this Court.

3. A counter-affidavit as also a supplementary counter-affidavit on behalf of the respondent No. 5, both have been filed today during the course of hearing of the case, which have been taken on the record. Learned State counsel appearing on behalf of the respondents, by referring to the averments made in the aforesaid counter-affidavit as also supplementary counter-affidavit, has tried to support the impugned order of transfer. According to him, there are/were valid grounds for transferring the petitioner from the post of S.H.O., Raxaul. However, despite repeated queries he has not been able to show that the grounds, which are sought to be relied upon, are recorded/indicated in the impugned order of transfer. The respondents have tried to supplant the grounds by bringing on record new materials, which are not reflected either in the impugned order of transfer (Annexure-3) or in the order passed by the respondent D.I.G., as contained in Annexure-8 to the Interlocutory Application filed on behalf of the petitioner for justifying the impugned order of transfer.

4. After having heard the parties and on consideration of the materials available on the records, this Court finds that the petitioner has been transferred within less than one year of his posting as S.H.O., Raxaul in the district of East Champaran, Motihari. Section 10 of the Act mandates that normally tenure of posting of S.H.O. shall be upto two years. However, such officer can be transferred even prior to completion of the period of two years, provided the provisions indicated in Section 10(2) of the Act are satisfied. On plain reading of Annexure-3, this Court finds that no reason, at all, has been disclosed by the respondent Superintendent of Police for effecting premature transfer of the petitioner. The conditions indicated in Section 10(2) of the Act, have also not been complied with. Indisputably, the impugned order of transfer is also contrary to the Standing Order No. 2 of 2011. The D.I.G. of the Range has also rejected the proposal of the Superintendent of Police for transferring the petitioner prematurely.

5. In the aforesaid facts and circumstances, this Court is of the opinion that the impugned order of transfer cannot be sustained. It is, accordingly, set aside and quashed. The petitioner shall be reinstated on the post of S.H.O., Raxaul. However, this order shall not preclude the competent authority from passing a fresh order strictly in accordance with law. The writ petition stands allowed to the extent indicated above, but there shall be no order as to costs. I.A. No. 7153 of 2014 stands disposed of.