
(2007) 11 JH CK 0053
In the Jharkhand High Court

Deo Sharan Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 JCR 575

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the learned Counsel for the parties.

The petitioner, who is an employee of the State Government in the department of Agriculture, has challenged the order as contained in Annexure-7 dated 30.1 2. 2006, by which several employees including the petitioner were transferred from one place to another. The, name of the petitioner finds at serial No. 6 and he has been transferred from Gumla to Garhwa by the said order. The petitioner has challenged the said order of transfer on the ground that he was earlier also transferred from Simdega to Gumla and within a period of six months he has again been transferred from Gumla to Garhwa.

2. The learned Counsel for the petitioner in course of arguments drawn my attention to the policy decision as contained in Annexure-2 dated 17th March 1978 issued by the State of Bihar and Annexure- 3 dated 4th June 1994 in which is has been stated that generally the employees of grade III and grade IV should not be transferred from one place to another except in cases of exigency. The grievance of the petitioner is that inspite of the said policy decision the petitioner has been transferred within a period of six months from Gumia to Garhwa by the impugned order as contained in Annexure-7 to the writ application.

3. It is settled law upto Supreme Court that transfer is an incident of service and is a part of service condition of an employee, which should not be interfered with

ordinarily by a Court of law in exercise of discretionary jurisdiction under Article 226 of the Constitution unless the Court finds that either the order is malafide or that the service rule prohibits such transfer or the authorities who issued the order were not competent to pass such order Reference in this regard may be made to a recent decision of the Supreme Court reported in Mohd. Masood Ahmad Vs. State of U.P. and Others, .

4. It is a common experience that these days whenever an employee does not get a place of posting of his liking or choice he generally challenges the order of such transfer by filing writ petition, which has to be strictly discouraged. The petitioner was transferred in the Month of December 2006 and till date the petitioner has not even joined the transferred post. It is submitted that the petitioner has filed representation to the Government against his transfer from Gumla to Garhwa through proper channel vide Annexure-8. but no order on his representation has been passed. The matter would have been different if the petitioner after joining the transferred post would have represented the competent authority against the said transfer order and if thereafter the authority concerned would not have heard the grievance of the petitioner then this Court could have issued appropriate direction in that regard.

5. It appears that about one year has already passed and the petitioner has not yet obeyed the order of transfer. Once the transfer order has been issued, employee has to join the transferred post unless until the transfer order is recalled or cancelled by the competent authority.

6. In the present case neither a case of malafide or case of the order being without jurisdiction has been made out. Considering the above facts, I am not inclined to interfere with the impugned order of transfer. Accordingly, this writ application is dismissed.

If the petitioner does not join the transferred post within a period of two weeks from today, the concerned authority will be at liberty to proceed departmentally against the petitioner for not obeying the order of transfer.