

(2012) 03 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 12722 of 2010

Dr. Kabindra Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 3 PLJR 397

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Tej Bahadur Singh and Brisketu Sharan Pandey, for the Appellant;
Gautam Bose and Ms. Sanghamitra Ghosh, for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard counsel for the parties. Assailing the impugned transfer order of the petitioner dated 30.6.2010, as contained in Annexure-1, Mr. Tej Bahadur Singh, learned Senior Counsel appearing on behalf of the petitioner, has submitted that the same was passed on a political pressure created by the Minister of Building Construction Department, who had somehow been responsible in bringing certain allegations against the petitioner to the notice of his counter-part Minister of the Health Department and on the basis of that alone, the petitioner was sought to be transferred on administrative ground. He would submit that such a transfer order being not a regular transfer order and based on the political considerations cannot be sustained.

2. In this case by an order dated 23.8.2010 the gist of grievance of the petitioner was reduced before passing an interim order of stay of transfer order of the petitioner which reads as follows:--

The petitioner has challenged the order of transfer, as contained in Notification No. 1172(2) dated 30.6.2010, as contained in Annexure-1, in relation to him. By the said notification, which was in relation to Medical Officers, being transferred on their request, the petitioner's name has been included showing the transfer to be on administrative ground from Gaya to Araria. This letter is signed by the

Under Secretary, Health Department, Govt. of Bihar, Patna.

Learned Counsel for the petitioner submits that even though the Government had the authority to transfer on administrative ground of a person in the service of the Government, this transfer is not made on any such administrative ground but has been made at the rest of a Minister who is not even elected from Gaya. The letter of the Minister is Annexure-6 to the writ petition on which there is an endorsement dated 30.6.2009, where notification is issued by the Under Secretary himself, endorsing as per the order had transferred to Koshi Commissioner. Thus, it is submitted by the Learned Counsel for the petitioner that it is apparent that on allegations being made by a person, the petitioner is being transferred. Thus, the transfer is mala fide.

Learned Counsel for the State submits that she would require instructions in the matter.

In the meantime, till further orders of this Court, the notification, as contained in Annexure-1, shall remain stayed in so far as the petitioner is concerned.

Put up this case "for admission" after four weeks.

3. As a matter of fact even when the transfer order was stayed on 23.8.2010 the counter affidavit was not filed in next 11/2 years and accordingly, when the case was placed on 9.2.2012 this Court had passed the following order:--

Having regard to the fact that the petitioner has alleged that his transfer was made on a complaint filed by the Minister of Building Construction Department vide his letter dated 20.5.2010 addressed to the Minister of the Health Department, as contained in Annexure-6, and that despite indulgence given by this Court in the order dated 23.8.2010 no counter affidavit has been filed by the respondents explaining the aforementioned allegations, this Court would direct the Secretary of the Health Department to produce the relevant file from which the order of transfer of the petitioner, as contained in Annexure-1, had been issued. It will be also open for the respondents to file their counter affidavit explaining the circumstances on the basis of which the petitioner was transferred on administrative ground.

List this case on 24th of February, 2012 at the top of the list when some Senior Officer of the Health Department in the rank of Joint Secretary or above shall personally remain present alongwith the aforementioned Government file.

Let a copy of this order be given to Mr. Gautam Bose, learned AAG-VIII.

4. Today Mr. Gautam Bose, learned AAG-VIII, appearing on behalf of the State with the help of the counter affidavit has tried to impress upon this Court that the transfer order of the petitioner dated 30.6.2010 was a routine transfer based on administrative exigencies and was done in the month of June, 2010 alongwith the other transfer cases. He has submitted that such transfer order of the petitioner who has been working in different dispensaries in Gaya District since

2001 by sending him out of Gaya District is inconsonance with the Government policy decision of transfer and posting which requires a Doctor to be posted in a District normally for a period of three years only. He would accordingly submit that since the petitioner had already completed the aforementioned period of three years on the present post on which he was working and in fact more than ten years in Gaya district, no interference is required by this Court.

5. The matter is not so simple as has been projected by the learned AAG-VIII. From the file which has been produced by him being File No. 2/T-66/2010 from which the impugned order has been issued, it would transpire that a decision for transfer of 16 Doctors, on their request, was taken keeping in view that their period of service was less than one year i.e. they were at the verge of retirement. The name of the petitioner was included in this list at page-51, the broadsheet of 19 Doctors, by making a mention "Prashashnik Adhar". The said "Prashashnik Adhar" in fact was never dealt in any portion of the file. The only administrative exigency which would emanate from a letter of Mr. Chhedi Paswan, the Minister in the Building Construction Department, dated 20.5.2010 addressed to the Departmental Minister of the Health Department reads as follows:--

6. This letter has also been annexed by the petitioner as Annexure-6 to the writ application and its contents or being received from the Minister concerned is not in dispute. As a matter of fact someone has made endorsement on the said letter of the Minister, Building Construction Department, dated 30.6.2010 "Adeshanusar Koshi Pramandal" as would be apparent from Annexure-6. Thus from the note sheet, page-1 of the file, it becomes clear that the name of the petitioner was added in the list of 16 doctors to be transferred on their own request only because the Minister of Building Construction Department desired an enquiry to be conducted against the petitioner. There is no discussion in the file as with regard to the nature of allegation or the necessity of the petitioner being transferred either on the ground of completion of tenure or his remaining posted at the place being detrimental for holding the enquiry. Thus, from the transfer file from which the notification of transfer of the petitioner was issued, no administrative exigency can be culled out.

7. Mr. Bose then would point out that there was a separate file as with regard to the petitioner being file No. 9/ Aa-2-21/2008 in which the allegations against the petitioner have been dealt and from the perusal of that file it could become clear that after receipt of various complaints against the petitioner a decision for initiating a departmental proceeding had been taken. In this context he has referred to the complaint of Sheo Kumar Singh whose name finds place in the aforesaid letter of the Minister of Building Construction Department. On the basis of this document it has been suggested that since there was a complaint to the Lokayukta of Bihar and the Lokayukta of Bihar by his letter dated 4.5.2010 had called for a report as with regard to the petitioner, the transfer order was issued on administrative ground. Unfortunately whatever has been submitted by Mr.

Bose is also not borne out from File No. 9/Aa-2-21/2008, inasmuch as the letter of Sheo Kumar Singh through the Lokayukta was received in the Department in the month of June, 2010 and the file was placed before the Joint Secretary on 23.6.2010 who while approving the three drafts had nowhere indicated the petitioner's need of being transferred. As a matter of fact after the three drafts as with regard to making enquiry against the petitioner from different levels was issued on 9.7.2010, the further steps in the matter of enquiry was processed and ultimately the Departmental Secretary had the occasion to take a decision only on 21.1.2011 when formal decision was taken for drawing a departmental proceeding against him. It would thus become clear that the so-called administrative exigency being sought to be found out by the AAG from the connected file produced by him for perusal of this Court would also not in any way justify the transfer order which had already passed and issued to the petitioner on 30.6.2010 on which day neither a departmental proceeding was initiated against the petitioner nor there was any consideration of transfer of the petitioner being necessary.

8. In that view of the matter, this Court will have no difficulty in holding that the ground of administrative exigency as invented and incorporated in the transfer order was based on no material save and except the letter of the Minister of the Building Construction Department. There would be no difficulty in accepting the submission of Mr. Bose that it will be always open for the Minister of any other Department also to bring to the notice of his counter-part Minister of the Health Department certain misconduct being committed by an officer necessitating action including transfer but such action cannot be by way of a dictation by one Minister to the other Minister. It is this aspect of the matter which was considered by the Division Bench of this Court in the case of *Sri Abdul Muttalib vs. State of Bihar & Ors.*, reported in 1985 PLJR 931, wherein it was held as follows:--

8. The democratic system to which all of us are part conceives that an executive officer should not be under political pressure, so that he can perform his duty in an objective and fearless manner. But, of late, several cases have been coming to this Court where an Officer can produce materials to show that he has not been transferred from a particular place in normal course of business of the State but really he has been ousted for an ulterior purpose. This is bound to cause demoralization and a situation of helplessness in many cases. As such, in my view, if on materials this Court is satisfied that the transfer of the officer concerned has been engineered, then such order has to be tested on the touchstone of Articles 14 and 16 of the Constitution.

9. It is true that in respect of an order of transfer of an officer, perhaps, no civil or evil consequence is involved because transfer is an integral part of public employment. But, will the court uphold even an order of transfer where it appears that the authority concerned has surrendered its discretion and judgment in respect of administrative exigency to a source which is not supposed

to decide that question? Can it reject an application in which an order of transfer has been challenged although the Court is satisfied that it is not in normal course of event, but amounts to ouster of an officer from a particular place at the instance of a particular individual? While hearing writ applications, we have come across cases where M.L.As. of the locality have been writing to the Ministers or Chief Minister concerned in respect of the transfer of officers from their locality. In one case we found that on such request an officer was not only transferred, but a copy of the order of transfer was formally communicated to the M.L.A./M.L.C. concerned. It has been rightly submitted on behalf of the respondents that an M.L.A./M.L.C. being the representative of the people has certainly a right to bring to the notice of the Government any act of omission or commission of a public servant. But, whether such right extends to get an automation transfer of such an officer? The representative of people can certainly bring to the notice of the authorities concerned the inaction or improper action of an officer in his locality but then the State Government has to apply its independent mind whether it will be in the interest of administration of the State that such an officer should be transferred irrespective of the period for which he has staved at such a place. In my opinion, whenever any complaint is made against an officer by a representative of the people, it should be examined by the State Government and an independent decision should be taken so that in many cases public servants do not become victim of local machination.

(underlining for emphasis)

9. This aspect of the matter was again considered by a Division Bench of this Court in the case of *Brahamchari Yashpal Vs. The State of Bihar and Others* , wherein it was held as follows:--

17. In the back drop of these facts comes the rather potent recommendation of the 7th respondent, the local M.L.A. on 5th January, 1994 and the administrative authorities by meekly obeying the same ordered on 21st January, 1994 the posting of the 6th respondent in the strong room of the Treasury. The Court, in the peculiar facts of this case, feels that there is more than what meets the eye and with utmost reluctance is compelled to infer that this volte face of the administrative authorities is brought about by the political pressure emanating from the recommendation of the local M.L.A. dated 5th January, 1994. It may be mentioned here that despite repeated queries by the Court, the counsel appearing for the State respondent has not been able to show when and how the ban on posting the 6th respondent in the strong room vide orders dated 20th December, 1991 and 2nd December, 1992 have been lifted nor is there any cogent explanation by the State respondent why the 6th respondent, who was found unsuitable for such posting as late as August, 1993, was found suitable for the same by January, 1994.

18. It is because of these facts of the case that the Court feels that it ought to interfere.

19. It is well known that the Court cannot run the administration as it has neither the time nor the expertise to do so but if the Court finds, as it does in the instant case, that public administration is run at the dictate and design of persons, who have no authority under the law to do so, it is the duty of the Court to interfere and straighten matters out so that people do not lose" confidence in the fairness of the administrative machinery.

20. It is equally well settled that when fair play is utterly denied by the administrative authorities, people will turn to Court complaining of such blatant cases of administrative excess and the Court cannot simply fold its hands on the ground that its interdiction may amount to intervention in administrative matters. Our Apex Court has laid down that every governmental action must be judged on the touchstone of reason and public interest (Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another,). Later decision (Shrilekha Vidyarthi vs. State of U.P., reported in AIR 1991 537) has affirmed the ratio in Kasturilal's case and has made it very clear that the wide sweep of Article 14 will undoubtedly take within its fold an unreasonable administrative action which is not in public interest.

21. A perusal of the facts of this case shows that the order dated 21st January, 1994 was not passed either in public interest nor was it informed with reason. As such the said order falls foul of the principles of both Articles 14 and 16, which have been thus lucidly stated in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, at page 584:--

... Where the operative reason for State action, as distinguished from motive inducing from the ante-chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible consideration, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16.

The said case was also one dealing with the transfer of the Chief Secretary of the State of Tamil Nadu. The Hon"ble Supreme Court while dealing with a case of transfer in a rather recent judgment in the case of Union of India and Others Vs. S.L. Abbas, has been pleased to hold at page 2445 "who should be transferred where is a matter for the appropriate authority to decide", (emphasis added).

22. Here certainly the 7th respondent is not the appropriate authority to monitor or control the posting of officers in the treasury office but here we find that it is at his dictate that the Collector, Saran has posted the 6th respondent in the strong room of the said treasury- a post which was eluding the 6th respondent all these years.

10. Thus in view of law laid by two Division Benches judgments of this Court in the case of Sri Abdul Muttalib (supra) and Brahmachari Yashpal (supra) and the

facts of the present case there would be no difficulty in holding that the impugned order of transfer of the petitioner was passed without independent application of mind and only on the political pulls and pressure. If there was a serious charge against the petitioner and his in continuation in the Dispensary was detrimental and the matter was in fact being also dealt in another file, a decision for transfer on administrative ground could have been taken after considering all these aspects either in that file or even in another file which was prepared for transfer of other Officers. The fact that no such reason can be made out from the files in question as referred would leave nothing for speculation that such transfer order was based only on political Pairwi and/or dictate of a counter part Minister who had otherwise nothing to do with the working of the Health Department. As noted above, the Minister was espousing the cause of another person Sheo Kumar Singh whose complaint was not confined only against the petitioner but a large number of other Doctors. The very fact that the complaint of Sheo Kumar Singh was not even available in the file in question, the transfer file of the petitioner from which the impugned order of transfer was issued will go a long way to show that the transfer order of the petitioner was passed mainly on the whims and pleasure of the Minister of Building Construction Department.

11. this Court, therefore, will have no difficulty in quashing such order of transfer which, as noted above, has remained stayed under the interim order of this Court.

12. Admittedly the petitioner has now completed a period of more than 11 years in the District of Gaya and Mr. Tej Bahadur Singh, learned Senior Counsel for the petitioner, himself submits that the petitioner does not want to continue for ever in Gaya, District. Thus, quashing of the impugned order of transfer of petitioner will not stand in the way of the official respondents in passing his fresh order of transfer strictly in accordance with law. With the aforementioned observation and direction, this application is disposed of.