
(2010) 12 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5464 of 2010

Dr. Pratap Nath Jha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Citation : (2010) 12 JH CK 0027

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Judgement

Poonam Srivastav, J.—Heard counsel for the Petitioner and also counsel appearing on behalf of the State. Counter affidavit and rejoinder has been exchanged between the respective parties and with their consent, this writ petition will be heard and decided finally at the stage of admission itself.

2. The grievance of the Petitioner is that the Petitioner while working as Civil Surgeon, Deoghar, was transferred to Ranchi to the post of Deputy Director (Headquarter), Health Department, Jharkhand for administrative reasons. The impugned order is Annexure-3 to the writ petition.

3. The first submission of the learned Counsel for the Petitioner is that certain guidelines have been framed which is Annexure-6 to the writ petition, where by prior recommendation is to be obtained from the Establishment Committee, this procedure is completely lacking in the instant transfer order. The order of transfer was stayed at the time when the writ petition was filed.

4. The next submission is that the Petitioner is at the verge of retirement and he is to retire on 28.02.2011 and, therefore, he should not be transferred at this fagend of his career. The general impression is that a person likely to retire in short while should be given a posting which is nearer to his home town or in the home town so that he may be able to arrange for his other requirements after his retirement.

5. Counsel for the State, on the other hand, placed reliance on the judgment of the Apex Court in the case of Mrs. Shilpi Bose and Ors. v. State of Bihar and Ors. as 1991(1)PLJRP61. The emphasis is on paragraph-4 of the said decision where it was held that even if the transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead the affected party should approach the higher authorities in his department.

6. In view of this, it is also brought to my notice that that are presentation has also been made to the Secretary, Department of Health, Medical Education and Family Welfare Respondent No. 2, which is still pending and, therefore, the Petitioner should not invoke dual remedy during the pendency of the representation.

7. Counsel for the Petitioner states that after waiting for quite sometime, when nothing was done, he has no other option but to approach this Court because this was the only efficacious remedy left for him.

8. Having heard both the parties and after going through the materials available on record, I dispose of this writ petition with a direction to the Secretary, Department of Health, Medical Education and Family Welfare Respondent No. 2, to decide the representation of the Petitioner dated 27.10.2010, which is Annexure-7 to the writ petition, as expeditiously as possible preferably within a period of three weeks from the date, a certified copy of the order is produced.

9. It is made clear that the representation should be decided in accordance with law and by means of a speaking order within a period of three weeks.

10. Till the order is finally passed on the representation, the Petitioner shall continue to work where he is working at present.