
(2005) 11 JH CK 0004
In the Jharkhand High Court
Case No : W.P.S. No. 6658 of 2004

Dr. Sushma Verma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Citation : (2006) 1 JCR 93

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S. Ranjan and Preeti, for the Appellant; S. Akhtar, SC-II, A.K. Mehta and A.K. Sahay, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the Office Order No. 498(4), dated 10.12.2004 by which the earlier departmental Notification No. 45(4), dated 3.11.2004 pursuant to which the petitioner was transferred and posted as District Leprosy Officer, Deoghar has been cancelled with a direction to the petitioner to continue on her earlier place of posting i.e. at Jamtara. By the said impugned notification, respondent No. 6 has been transferred and posted as District Leprosy Officer, Deoghar with a direction that Dr. Jha will also hold an additional charge of Medical Officer, Raj Kumari Kushthashram at Deoghar.

2. Petitioner's case is that she was posted as District Leprosy Officer, Jamtara. By notification dated 3.11.2004 she was transferred as District Leprosy Officer, Deoghar. In compliance of the said order of transfer petitioner said to have submitted her joining on 6.11.2004 and the Civil Surgeon-cum-Chief Medical Officer Deoghar acknowledging her joining directed her to submit charge report. On the same day, petitioner submitted charge report. All of a sudden the impugned notification dated 10.12.2004 has been issued by respondents cancelling order of transfer of the petitioner. It is contended by the petitioner that since she has already handed over charge of District Leprosy Officer, Jamtara and started functioning as District Leprosy Officer, Deoghar the

impugned notification cancelling her transfer at Deoghar is absolutely illegal and wholly without jurisdiction.

3. In the counter affidavit filed by respondent No. 3, Civil Surgeon-cum-Chief Medical Officer, Deoghar, it is stated that earlier petitioner was transferred from Deoghar to Dumka and after three months she has again been transferred to Deoghar on the basis of representation submitted by her. It is further stated that respondent No. 6 is much senior to the petitioner inasmuch as respondent No. 6 joined service in 1981 whereas petitioner joined service in 1991. Since the earlier order of transfer dated 3.11.2004 posting the petitioner as District Leprosy Officer, Deoghar was not in accordance with law, he filed representation which was considered by the department and the order of transfer was cancelled.

4. It is well-settled that when the order of transfer is given effect to, normally it could not be cancelled and the proper course is to issue a fresh order of transfer. In the instant case, as noticed above, pursuant to the order of transfer dated 3.11.2004, petitioner said to have submitted her joining on 6.11.2004 before the Civil Surgeon, Deoghar. From perusal of Annexure-9 to the writ application, it appears that the Civil Surgeon, Deoghar confirmed her joining and directed her to submit her charge report and on the same day she submitted her charge report. In the counter affidavit filed by the Civil Surgeon, he has not denied the letter issued by him as contained in Annexure-9 to the writ petition. The contention of the petitioner is that she was transferred from Jamtara to Deoghar on the basis of her representation wherein she has stated difficulties of her school/college going children. There is no dispute that an employee may be transferred on the basis of representation from one place to another place but while making such transfer it must be taken into consideration that such employee can not be posted above another person who is senior to him or her. In the instant case, it has not been disputed by the petitioner that respondent No. 6 is about 10 years senior to her and if the petitioner is posted as District Leprosy Officer, Deoghar then respondent No. 6 will come under the administrative control of the petitioner. In such circumstances, I do not find any justification to quash the impugned order of cancellation of transfer of the petitioner as District Leprosy Officer, Deoghar but at the same time for the ends of justice, it would be fit and proper to post the petitioner in place of respondent No. 6 instead of asking respondent No. 6 to hold additional charge.

5. In the facts and circumstances of the case, this Court without interfering with the impugned order of cancellation of transfer, directs the respondents to issue appropriate order of posting of the petitioner on the post which respondent No. 6 was holding at Deoghar or in any other suitable post at Deoghar.

6. With the aforesaid observation and direction, this writ application is disposed of.