
(1995) 11 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 6113 of 1995

Gurudeo Prasad Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0029

Final Decision : Allowed

Judgement

A.K. Ganguli, J.—After hearing the learned Counsel for the parties, this writ petition is being disposed of at the stage of admission itself by passing the following orders.

2. The impugned order in this case is at annexure-1 dated 22nd July, 1995 passed by the Engineer-in-Chief, Respondent No. 2 herein. By the said order several persons have been transferred. So far as the Petitioner is concerned, his name figures at serial No. 6 in the said list. This Court is concerned only with the transfer of the Petitioner and not with other persons affected by the said order. The main grievance of the Petitioner is that by order dated 20th June, 1995, he has been transferred from the post of Estimator, Road Construction Department, Biharsharif to Biroriyars Prashakha in Patna City and pursuant to the said order of transfer he joined the new place of posting on 29th June, 1995. Barely within a month thereafter the Petitioner is sought to be transferred by the impugned order dated 22nd July, 1995 again back to Biharsharif as an estimator. This Court finds that this transfer of the Petitioner within a month of his joining the place of posting is arbitrary and therefore unreasonable. Learned Counsel for the State-Respondents has not been able to indicate any cogent ground or reason for such transfer of the Petitioner within a month of the Petitioner's posting at Patna City.

3. In the counter-affidavit filed by the State-Respondents nothing has been stated why it was considered necessary to transfer the Petitioner within a month of his posting at Patna City.

4. The Court is aware of the legal position that the executive authorities are vested with the power of transfer for proper and smooth functioning of the administrative machinery. At the same time the Court thinks that while exercising such power, the authorities must eschew arbitrariness and act reasonably. When a person is transferred within a month of his posting to Anr. place and that too without any justification for such transfer the obvious conclusion of the Court is that power of transfer has not been exercised either seasonably or in public interest. Like all power the power of transfer is also conferred on the authorities on a trust that it will not be exercised arbitrarily but when that trust is belied, as it has been in this case, the Court may interfere.

5. Learned Counsel for Respondent Nos. 6 and 7 has drawn the attention of the Court to a decision reported in AIR 1993 SC 8444 : 1994 (1) PLJR (SC) 1 (Union of India v. S.L. Abbas) wherein the learned Judges of the Apex Court have held that the Court's power of interference in matter of transfer is extremely limited and normally the Court can interfere only when such transfer is vitiated by non-compliance with the mandatory statutory provision or where the exercise of power can be described as malafide.

6. In the instant case, however, various allegations have been alleged by the Petitioner against the private Respondents Nos. 6 and 7 who have appeared and tried to refute the same but this Court need not go into those questions in view of the order (sic) proposes to pass.

7. It has also been decided by the Apex Court in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, that malafide exercise power and arbitrariness are different (sic) radiations emanating from the same (sic) In fact the latter comprehends the (sic).

8. Later on the Apex Court has also (sic) that reasonableness runs like a golden and through the entire fabric of the conditional framework and all governmental (sic) must be judged on the touchstone reason and public interest. Relying on (sic) principles this Court holds that in the (sic) case the order of transfer is, if not (sic) by malice in fact, is certainly vitiated police in law.

9. This Court, therefore, quashes the impugned order of transfer, in so far it affects the Petitioner, on the ground of it being arbitrary and contrary to public interest since there is no explanation for such an order of transfer within a span of less than a month.

10. This Court, however, records that it has not gone into the merits of any allegation made in the writ petition against Respondent Nos. 6 and 7.

11. This writ petition thus succeeds. There shall be no order as to costs.