
(2000) 03 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 158 of 2000

Jagbandhu Mahatha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-03-2000

Acts Referred:

Citation : (2000) 2 BLJR 1102

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Petitioner in this writ application is a Circle Officer in the service of State of Bihar. He has challenged and sought quashing of order contained in Memo No. 1231 dated 20.12.1999 (Annexure-1) insofar as it relates to the petitioner, an order for his transfer from the post of Circle Officer, Jugsalai (East Singhbhum) to the post of Circle Officer, Jhikpani (West Singhbhum) and also the consequential order dated 21.12.1999 (Annexure-2) by which another order of same date authorising the petitioner to assume unilateral charge of the post of Circle Officer, Jugsalai was cancelled in view of impugned order of transfer contained in Annexure-1.

2. The facts of the case, in brief, are as follows. On 30.6.1999, the petitioner was transferred from Hilsa to Panki (Palamau) as per recommendation of Establishment Committee. Petitioner wanted to be posted at Jamshedpur or at nearby Anchal close to Jamshedpur on the ground that his old and ailing father stays at Jamshedpur and he is required to look after him. Instead of Joining at Panki, the petitioner appears to have filed a representation for being posted at or near Jamshedpur on 4.11.1999. On 29.11.99, the Establishment Committee held a meeting, as appears from Annexure-B/4 to the counter-affidavit of respondent No. 4, to consider those cases where the employees concerned had filed representations against their transfer. Cases of 87 persons appear to have been considered but that did not include case of the petitioner. Thus, without any

recommendation of the Establishment Committee the petitioner was transferred by Annexure-3, an order dated 8.12.1999, to Jugsalai (East Singhbhum). By the same order, one Sunil Kumar was transferred from Jugsalai to Gamharia and respondent No. 4 was transferred from Gamharia to Chandankyari (Bokaro). The petitioner was not given charge at Jugsalai and hence, the Deputy Commissioner vide an order dated 21.12.1999 (Annexure-5) authorised the petitioner to assume unilateral charge but in the meantime, the impugned order dated 20.12.1999 had been issued whereby the petitioner was transferred to Jhikpani and respondent No. 4 was transferred in place of petitioner at Jugsalai and in view of the impugned order contained in Annexure-1 the Deputy Commissioner, East Singhbhum, Jamshedpur issued another order on 21.12.1999 itself which is the other impugned order contained in Annexure-2 whereby Annexure-5 was cancelled.

3. On behalf of the petitioner, the impugned orders were assailed mainly on two grounds. Firstly, on the ground that he is being subjected to a pre-mature transfer within few days of his earlier transfer on 8.12.1999 and secondly, on the ground that there were no good reasons for transferring him from Jugsalai to Jhikpani specially when he had been posted at Jugsalai in view of his representation dated 4.11.1999 (Ann exure-10).

4. After notice respondent No. 4 appeared and filed IA No. 693 of 2000 for modification of the interim order and annexed several documents to show that in fact, on account of the impugned order he had been functioning as Circle Officer at Jugsalai till he was relieved pursuant to interim order of this Court dated 18.1.2000. On behalf of respondent No. 4, it was highlighted that the petitioner had somehow managed to evade to comply with the order of his transfer dated 30.6.1999 for a long time and without, any recommendation of Establishment Committee meeting on 29.11.1999 or of the Establishment Committee meeting dated 16.12.1999 (Annexure-7) he was accommodated at Jugsalai in haste by order dated 8.12.1999 (Annexure-3). Subsequently, the Establishment "Committee held a meeting on 16.12.1999 to reconsider the matter of transfer on account of representations received from 41 officials mentioned in Annexure-7. As a result of such deliberation of the Establishment Committee, the impugned order contained in Annexure-1 was "issued on 20.12.1999 which relates to 33 persons including the petitioner and respondent No. 4. Thus, according to respondent No. 4, the impugned order contained in Annexure-1 has been issued pursuant to recommendation of the Establishment Committee as evidence by Annexure-7 whereas the earlier order of transfer dated 8.12.1999 by which the petitioner was posted at Jugsalai, was without any recommendation in his favour by the Establishment Committee which had considered cases of 87 persons on 29.11.1999. In such circumstances, it was urged on behalf of respondent No. 4 that there was no illegality or mala fide involved in issuance of the impugned orders.

5. In matters of transfer this Court is usually reluctant to interfere unless it finds

a transfer order to be without jurisdiction or tainted with mala fide. Transfer is an incident of service and not a punishment. In convenient transfers may create hardship for an individual employee but it is for the employer to consider such hardship, in case any representation is filed in accordance with rules and normally it is not for this Court to look into reasons for transfer only because it may create hardship for the employee concerned. In the present case, there is no challenge to the impugned orders on ground of lack of power or jurisdiction. Although a vague allegation has been levelled in the writ petition that the impugned transfer has been made for political or partisan gains but there is no specific allegation against any individual authority and the particulars are too vague to merit any serious consideration on ground of mala fide. The earlier order dated 8.12.1999 by which the petitioner was posted at Jugsalai, was not on the recommendation of the Establishment Committee and hence, it cannot be given any higher sanctity than the impugned order of transfer issued within a few days after the Establishment Committee considered representations of as many as 41 affected persons in its meeting held on 16.12.1999. Although the case of respondent No. 4 was not considered on 16.12.1999 but it does not help the Petitioner because his case was also not considered by the Establishment Committee either on 29.11.1999 (Annexure-B/4) or on 16.12.1999 (Annexure-7). On behalf of the petitioner, some facts were alleged against the respondent No. 4 on the basis of which, it was argued that he should not have been posted at Jugsalai, Jamshedpur. This aspect of the matter also, in my view, is fit to be considered only by the State Government and not by this Court.

6. The petitioner's representation contained in Annexure-10 shows that he wanted to be posted at or near Jamshedpur and Jhikpani, the place where the petitioner has been posted by the impugned order though in West Singhbhum, is an Anchal quite close to Jamshedpur. However, if he is not satisfied with that posting, it would be open for him to file a representation before the authorities concerned to reconsider the matter of his transfer and posting but in the facts of the case, in my view, no good ground has been made out for interference in the matter of transfer by this Court.

7. Accordingly, this writ application is dismissed with the observation that if the petitioner files a representation then the same should be disposed of expeditiously and on its own merit. In the facts of the case, the parties are directed to bear their own costs.