
(2011) 08 JH CK 0011
In the Jharkhand High Court
Case No : L.P.A. No. 232 of 2011

Jai Prakash Narayan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2012) 1 JCR 221

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner's contention is that the petitioner is a disabled person and he sought his transfer and on the writ petitioner's personal representation, the petitioner's case for transfer from Primary School. Gopalpur. Anchal Thakur Gangti, district-Godda to Upgraded Middle School, Jamua. district-Godda was considered and vide order dated 30.6.2009. the petitioner was transferred. However, at the transferred place, there was No. vacant post, therefore, vide order dated 11.11.2009. the petitioner was posted at Middle School Deobanda, Anchal Porahat, district-Godda itself. The said order dated 11.11.2009 was passed by the District Superintendent of Education, Godda. The petitioner, in pursuance of the said order dated 11.11.2009. joined at the School at Deobanda. Anchal Porahat, district-Godda, and he continued till he received the order dated 29.9.2010, a copy of which has been placed on record at Annexure-3 to the memo of petition. By this order dated 29.9.2010, the petitioner's transfer order has been cancelled on the ground that the District Superintendent of Education had No. Jurisdiction to make adjustment so as to post the writ petitioner at different school vide order dated 11.11.2009. The petitioner has challenged the said order by preferring writ petition being W.P.(S) No.. 2063/2011, which has been dismissed vide order dated 6.6.2011; hence this L.P.A. has been preferred by the writ petitioner-appellant.

2. The learned counsel for the petitioner has submitted that the order dated

11.11.2009 passed by the District Superintendent of Education, Godda. is No. t a transfer order but is only a order of posting" for which he was competent under the Rules. It is also submitted that the transfer order, which has been given effect to. stands exhausted and thereafter the transfer order could No. t have been cancelled subsequently to the joining of the writ petitioner at the transferred place even while, he has been posted in a different school. It is also submitted that, without admitting, assuming for the sake of arguments, that the District Superintendent of Education was No. t competent to pass the order of posting, even then, competent committee should have corrected their own mistake of transferring the petitioner at a place where post was No. t vacant and whether because of availability of the post at the place where he is working, a fresh transfer order should have been passed as on 30.6.2010 reason for the petitioner's transfer was found just and proper.

3. The learned counsel for the respondents has submitted that the District Superintendent of Education had No. jurisdiction to transfer one Teacher from one school to aNo. ther school as has been done in this case. It is also submitted that the competent authority took a decision on 23.9.2010 and cancelled the transfer order, which has been done because of the reason that the writ petitioner could have been posted in the area, where he is a resident, and therefore, the writ petitioner could No. t have been posted there outside his area of residence. It is also submitted that the order of posting of the District Superintendent of Education is absolutely illegal and void.

4. We consider the submissions of the learned counsel for the parties and perused the impugned order.

5. It is No. t in dispute that the petitioner was transferred by the competent authority vide order dated 30.6.2009 and It is also No. t in dispute that the transfer order was passed by the competent authority even when there was No. post in the school where the writ petitioner was transferred. The writ petitioner continued to serve in the school where the writ petitioner was posted by the order of the District Superintendent of Education and on 23.9.2010 i.e. after more than one year from the order dated 30.6.2009. the competent committee took the decision to cancel the transfer order which was made on 30.6.2009. From the order dated 23.9.2010, it is No. t clear as to why the said authority did No. t consider the reason for transfer of the writ petitioner from one place to aNo. ther place and did No. t consider that at that time if there was No. vacant post, then whether the District Superintendent of Education, Godda, could have been passed the order of posting and No. t. and even if the said authority was No. t competent to pass the order of posting then there was reason for the same competent committee to pass appropriate order so as to put the petitioner in the school where he has been posted by the District Superintendent of Education by taking into account the fact that the competent committee on 30.6.2010 already found the cause shown by the petitioner for his transfer as Just. So far as the contention of the learned counsel for the respondent that the writ petitioner is a

resident of the same area and the writ petitioner was a resident of Thakur Gangti, which is the petitioner's home Block, and therefore, under the policy, he could have been posted in the Thakur Gangti as the Local Teacher, as policy will be able to have imparted the good education to the students, learned counsel for the petitioner has submitted that the Thakur Gangti is 50 Kilometers away from the place of the petitioner's posting and the petitioner has No. w constructed his residence in the place where the petitioner is working.

6. The arguments of the learned counsel for the respondents and the contention of the petitioner have No. relevance in this controversy in view of the fact that in the impugned order, It has No. t been taken as a reason for cancellation of the transfer of the petitioner, which was made by the order dated 30.6.2009 No. r it was a ground for cancellation of posting of the petitioner in pursuance of the order dated 11.11.2009.

7. Since at the place, where the petitioner is working, there is a post vacant, and the petitioner is working, therefore, relevant consideration has No. t been taken by the competent committee for cancellation of the transfer order in order dated 23.09.2010 and once the transfer order has been executed, there was No. reason for cancellation of the transfer order. In view of the above reason, the order dated 23.09.2010 cancelling the petitioner's transfer is set aside and the Committee is directed to reconsider the matter afresh and pass appropriate order to transfer the petitioner at the place where the petitioner was working before 23.9.2010. The committee is also directed to pass the appropriate order in the light of the observation made above within a period of 15 days from today and communicate the same to the petitioner.