
(2006) 08 JH CK 0082

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3638 of 2006

Kamal Shankar Srivastava

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Citation : (2006) 4 JCR 207

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

Bench : Single Bench

Advocate : S.K. Mishra and Ritu Kumar, for the Appellant; Kalyan Roy and Arvind Kr. Mehta, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner has prayed for quashing the order as contained in Memo No. 207/06-31 dated 30.6.2006, whereby respondent No. 5 - Shri Baldeo Choudhary, has been transferred and posted as District Transport Officer, Dhanbad in place of the petitioner without issuing an order of posting of the petitioner.

2. The petitioner joined the Bihar Administrative Services and was allocated Bihar cadre. Petitioner's services were given to the Transport Division vide notification dated 7th February 2002 and petitioner was posted as District Transport Officer, Giridih. By another notification dated 30.12.2003, he was transferred to the post of District Transport Officer, Singhbhum West, Chaibasa. Again he was transferred and posted as District Transport Officer, Jamshedpur by notification dated 14.12.2004. within a short span of time, the petitioner was again transferred and posted as District Transport Officer, Dhanbad vide notification dated 11.6.2005. By the impugned notification dated 30.6.2006, respondent No. 5 Baldeo Choudhary has been transferred, and posted in his place as District Transport Officer, Dhanbad without posting the petitioner in any other place. The petitioner's case is that the impugned order of transfer of respondent No. 5 in place of the petitioner has not been issued under the recommendation of any

Establishment Committee, nor it was issued under the signature of Principal Secretary, rather it was issued under the signature of the Transport Commissioner. It is further alleged that the aforesaid order of posting has been made only on the recommendation of minister on extraneous consideration and not on the basis of duly constituted Establishment Committee of the Transport Department. It is further contended by the petitioner that respondent No. 5 Shri Baldeo Choudhary was posted as District Transport Officer, Dhanbad for about 2 1/2 years back and the petitioner took charge from him. But again he has been transferred and posted as District Transport Officer, Dhanbad. It is further alleged that the notification was issued on 30th June, 2006 which was a gazetted holiday and also when the Principal Secretary was on leave.

3. The respondent Nos. 2, 3 and 4 filed a counter affidavit wherein it is stated that the petitioner is the member of Jharkhand Administrative Services and at present he is posted as District Transport Officer, Dhanbad. His services were taken back by the Personnel Department vide notification dated 24.6.2006. Hence he was transferred from Dhanbad by the impugned notification and respondent No. 5 has been posted at Dhanbad in his place. However, it is stated that the notification has been issued in anticipation of formal recommendation of the Establishment Committee. The Principal Secretary was out of Ranchi and Shri Rajiv Arun Ekka was Incharge of Principal Secretary to perform the routing work. So the notification was issued after formal approval of the Departmental Minister by the Transport Commissioner in capacity of Principal Secretary. The respondents' further case, is that many allegations have been received against the petitioner during his posting at Singhbhum, Jamshedpur and Dhanbad. His services were given to Transport Department and he has completed five-year service in this Department. In the reply to the counter affidavit of respondent Nos. 2 to 4, the petitioner has stated that the notification dated 24.6.2006 by which the services of the petitioner and five other Officers have been sent back to the Parent Department was never served upon the petitioner, nor the said notification was given effect to. It is stated that the Officers including the petitioner whose services were allegedly sent to the Parent Department vide notification dated 24.6.2006 are still working in the same place of posting except Shri Suresh Kumar Dudani who has been posted from Dumka to Chaibasa.

4. I have heard Mrs. Ritu Kumar, learned Counsel appearing for the petitioner and Shri A.K. Sinha, learned Advocate General for the State and Shri Kalyan Roy, learned Counsel appearing for respondent No. 5.

5. As noticed above, the stand of the respondent-State in the counter affidavit is that petitioner is the member of Jharkhand Administrative Services and at present posted as District Transport Officer, Dhanbad. His service was taken by the Personnel Department vide notification dated 24.6.2006. A copy of the said notification has been annexed as Annexure-A to the counter affidavit filed by respondent No. 5. From perusal of the said notification dated 24.6.2006, it reveals that the services of six officers in transport department has been sent

back to the Personnel and Administrative Department. These six officers are:

- 1 Dr. Kamal Shankar Shrivastava- District Transport Officer-Dhanbad.
2. Sri Loknath Saraswati- District Transport Officer, Palamau.
3. Sri Vijay Kumar Sinha, District Transport Officer, Giridih.
4. Sri Shivendra Singh- District Transport Officer, Ranchi (additional charge of Jamshedpur and Chaibasa.)
5. Sri Suresh Kumar Dudani- District Transport Officer, Dumka.
6. Sri Wilson Bhengra, District Transport Officer, Bokaro.

6. The contention of the petitioner is that this notification was not given effect to nor it was served upon the petitioner which is evident from the fact that one of those officers namely, Sri Suresh Kumar Dudani, District Transport Officer, Dumka has been transferred and posted as District Transport Officer, Chaibasa. If the stand of the respondent-State is accepted that service of these six persons were sent back to the parent department i.e. Personnel and Administrative Department then how and under what circumstances Sri Suresh Kumar Dudani has been transferred and posted as District Transport Officer, Chaibasa by the impugned notification. Nothing has been stated in the counter affidavit filed by the respondent State as to how Sri Suresh Kumar Dudani has been transferred and posted as District Transport Officer, Chaibasa when his service along with the services of the petitioner and other officers were sent back to the parent department. On the contrary, it has been admitted that the impugned notification has been issued in anticipation of formal recommendation of the Establishment Committee. The Personal Secretary was out of Ranchi and the Transport Commissioner was incharge of Personal Secretary to perform the routine work. For better appreciation paragraph 4 of the counter affidavit filed by respondent Nos. 2 to 4 is reproduced herein below:

That the substance and gist of the matter is this that the petitioner is the member of the Jharkhand Administrative Service and at present he was posted as D.T.O. Dhanbad vide Transport Department Notification No. 170 dated 11.06.05. His services were taken back by the personnel department vide Notification No. 3360 dated 24.6.2006. Hence he was transferred from Dhanbad vide transport. Department Notification No. 31 dated 30.06.06 and Sri Baldeo Choudhary, D.T.O. Hazaribagh posted at Dhanbad in place of Sri Srivastava. The notification has been issued in anticipation of formal recommendation of the establishment committee. The Principal Secretary was out of Ranchi, Sri Rajeev Arun Ekka, Transport Department was in charge of Principal Secretary to perform the routine work. So the notification was issued after the formal approval of Departmental Minister by the Transport Commissioner in capacity of Principal Secretary. Along with this it is also fact that many allegations have been received against Sri K.S. Srivastava, during his posting at Singhbhum Jamshedpur and Dhanbad. His services were given to Transport Department in the year 2002 and

he has completed about five years in this Department, A Government Servant is liable to be transferred after three years service. Due to this his services were taken back by the Personnel Department.

7. Prima facie, therefore, I am of the opinion that the impugned notification has been issued hastily without approval of the Committee and also by an incompetent authority, which give smell of extraneous consideration.

8. For the reasons aforesaid, this writ application is allowed and the impugned notification dated 30.6.2006 is quashed. However, the competent authority of the respondent shall be at liberty to issue fresh notification of transfer and posting of the officers in accordance with law and after following the procedure of law.