
(2000) 12 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 10971 of 2000

Madan Mohan Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Citation : (2001) 1 BLJR 539 : (2001) 1 PLJR 517

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. The writ petitioner is a Mining Inspector in the service of Government of Bihar who has challenged order dated 19.9.2000 (Annexure-5) whereby certain employees of the Mines Department, Government of Bihar have been transferred to different places including the petitioner and respondent No. 5, another Mines Inspector. The petitioner has been transferred from District Mining Office, Deoghar to that at Patna whereas respondent No. 5 has been transferred and posted to the post earlier held by petitioner at Deoghar.

3. According to learned Counsel for the petitioner, the impugned order is bad in law for the following reasons:

(1) The narration of certain facts in the beginning of the order shows that transfers in question are being made by way of partial amendment to these earlier orders all dated 29.6.2000 but since those three orders do not relate to earlier transfer of Mines Inspectors, more particularly of petitioner and respondent No. 5 hence, it is an order passed without paper application of mind.

(2) Since the earlier order of transfer of petitioner and respondent No. 5 was passed on 3.7.1999 on the recommendations of the establishment committee hence, after one year only their further transfers without such recommendation

is illegal and in violation of judgments of this Court reported in Krishna Mohan Choudhary Vs. The State of Bihar and Others .

(3) The impugned order of transfer could not have been passed in view of prohibition on such transfer introduced by Government of India through Annexure-6 dated 13.9.2000 which was circulated by Government of Bihar through Annexure-7 dated 24.9.2000 and in any view of the matter, petitioner could not have been relieved pursuant to such transfer on 27.9.2000 as by that date Annexure-7 had already been issued.

4. On behalf of respondent No. 5 as well as respondent officials all the aforesaid points were refuted as untenable in the facts of the case and it was submitted that a careful perusal of impugned order contained in Annexure-5 would show that reference to three orders dated 29.6.2000 has been made by way of abundant caution as the transfer order covers several categories of employees including clerks whose transfer required modification of some of the orders dated 29.6.2000 mentioned in Annexure-5. Hence, it has been submitted that the impugned order does not suffer from any non-application of mind and on that account, petitioner's transfer cannot be declared illegal. It was next submitted on their behalf that the transaction of transfers covered by Annexure-5 do not have any connection with Annexure-1 the earlier transfer order dated 3.7.1999 which was already implemented long back and hence, required no modification. In such circumstances, there could be no requirement of placing the proposal for transfer of petitioner before the establishment committee as it was not a transaction of usual transfer required by Government resolution dated 1.11.1980 to be done in the months of June and December. Reference in this regard was made to a judgment of this Court in the case of Mann Singh v. State of Bihar 1982 BBCJ 392 which considered the Government resolution dated 1.11.1980 and held that strict compliance of the procedure relating to recommendation of the establishment committee was not mandatory and such lacuna cannot render the order of transfer invalid. It was further pointed out that the Government resolution as discussed in the said Judgment itself provides for out of turn transfers for which the only condition is that it should be passed after obtaining approval of the authority next higher to the authority who is competent to pass orders of transfer in usual course. According to counter-affidavit of the State, the aforesaid procedure has been complied with by obtaining approval of Minister Incharge of the Department.

5. It was lastly submitted on behalf of the respondents that petitioner's objection to his transfer or relieving on the basis of Annexures 6 and 7 requires no interference by this Court because even if such executive directions have been violated, the remedy for the petitioner lies in filing a representation which may be considered by the authorities concerned and as per guidelines of Central Government contained in Annexure-6 which were circulated by the State Government after the impugned order, in such a case where transfer orders have been given effect to, only suitable corrigendum is required to be issued treating

the same as provisional pending reorganization of States. Respondents have no objection to petitioner's filing a representation in the matter or even in issuance of a corrigendum for treating his transfer as provisional pending reorganization of States.

6. On considering the materials available on record and the rival contentions it is found that reference to certain earlier orders of transfer of clerks and other category of employees of the Mines Department in impugned order contained in Annexure-5 does not render the transfer of petitioner and respondent No. 5 invalid on account of non-application of mind. It may have been more appropriate to Mines Inspectors and others not covered by earlier orders sought to be partially modified but mere inclusion of their transfer in the order contained in Annexure-5 will not affect the legal validity of such transfers. So far as the second contention is concerned, petitioner's reliance upon the three judgment of this Court referred to earlier is of no help as those judgments dealt with different facts and situations.

In the case of Krishna Mohan Choudhary v. State of Bihar 1994 (2) PUR 315 : 1994 (2) BUR 1294, the Minister Incharge ordered for effecting alterations in recommendations of establishment committee without assigning reasons there for and such exercise of power was held to be vitiated in law on the ground of abuse of power. In the case of Shyam Kumar Prasad v. State of Bihar 1995 (1) PLJR 69, the impugned order of transfer was passed on recommendation of a MLA and hence, the same was found to be vitiated by mala fide on fact as well as in law. In that case, the Division Bench noticed earlier judgment in the case of Mann Singh v. State of Bihar (supra) and merely emphasised that part of the judgment which provides that even directory provisions are not meant to be violated and should be beyond at least substantially. No doubt, in that judgment, it was held that if the matter of transfer has not been placed before the establishment committee at all, the order of transfer would be vitiated in law but in that case, the entire provisions of Government resolution dated 1.11.1980 which were considered in the case of Mann Singh v. State of Bihar (supra) were not read or considered. In the case of Mann Singh, the Division Bench specifically considered those provisions which require no reference to establishment committee and which contain special provisions with prescribed condition and thereafter, the Division Bench specifically held in that case that it was not possible to accept the contention that reference to establishment committee is a must in all transfers and the Division Bench further found no infirmity in the impugned order of transfer which has been issued without obtaining the recommendation of the establishment committee. Paragraphs 16 (a) and 17 of the aforesaid report directly deal with the present issue and the finding does not support the case of the petitioner. The Division Bench in the case of Shyam Kumar Prasad (supra) did not notice this aspect of the matter nor it differed from the views of the earlier Division Bench in the case of Mann Singh (supra). Hence, this Court finds the views expressed by the Division Bench in the case of Mann Singh v. State of Bihar (supra) to be still binding. There is another

aspect of the matter relating to the present controversy. Here the petitioner has not made averments to challenge the impugned order for lack of power. In other words, it is not the case of the petitioner that the impugned order has not been passed by the competent authority. There is no allegation of any mala fide in fact or in law. In such circumstances, as observed by the Hon"ble Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, , even if the transfer order be deemed to be in violation of executive instructions, this Court ordinarily should not interfere with the order instead affected parties should approach the highest authorities in the Department. This proposition was laid down by the apex Court on the ground that if the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The facts in the case of Dr. Dharmendra Kumar Vs. The State of Bihar and Others, , were quite different wherein the Court found the impugned orders vitiated not only by malice in fact but also malice in law. For the aforesaid reasons, this Court finds no merit in the second contention advanced on behalf of the petitioner.

7. With regard to the aforesaid issue only, it is relevant to observe that the judgment of the Supreme Court in the case of Bharat Singh and Others Vs. State of Haryana and Others, relied upon by the petitioner for the purpose that statement in paragraph 9 of the counter-affidavit of State should not be accepted unless the relevant files were annexed to show that Minister Incharge had approved the proposal, is inapplicable and the general proposition regarding pleading and proof as mentioned in paragraph 13 of the said judgment was in entirely different circumstances and facts and does not help the case of the petitioner who has not pleaded anything different in the writ application nor any rejoinder has been filed to controvert such statement in the counter-affidavit.

So far as the last contention of the petitioner is concerned, the same is also found to be without any substance and the contention of the respondents is found to be correct that if the petitioner is aggrieved on account of breach of executive decisions contained in Annexures 6 and 7, he may be given liberty to file a representation before the authority concerned.

8. For the aforesaid reasons, this Court finds no merit in the writ application and the same is accordingly dismissed. However, liberty is given to the petitioner that if so advised, he may file a representation against the impugned order before the authority concerned. It is further observed that if such representation is filed then the same should be considered expeditiously on its own merit and in accordance with law.