

(2012) 03 JH CK 0154
In the Jharkhand High Court
Case No : L.P.A. No. 108 of 2012

Mahesh Prasad Lunkesh

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Citation : (2012) 03 JH CK 0154

Hon'ble Judges : Prakash Tatia, J; Aparesh Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the appellant. Learned Counsel for the appellant submitted that the appellant/petitioner was appointed in the Administrative Department of Road Construction Department of the Government of Jharkhand and his services was placed under the Rural Works Department by order dated 28.2.2009. He was posted in various departments and now, on 6.7.2011 the petitioner was working at Madhupur in the District of Deoghar in Rural Works Department. He submitted a complaint against one contractor before the Executive Engineer on 21.11.2011 and being annoyed by that complaint, the Executive Engineer, who is not the competent authority, passed an antedated order dated 12.11.2011 by which all the powers of the writ petitioner was seized. The petitioner then raised objection and submitted protest to the higher authority which have been placed in the writ petition by the petitioner. The petitioner's contention is that because of lodging of this complaint, firstly, against the contractor on 21.11.2011 and then, against the Executive Engineer on 25.11.2011, he has been transferred to his parent department vide order dated 26.12.2011 which order was passed by Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary. The petitioner challenged that order of transfer by placing all facts on record by filing the writ petition No. W.P.(S) No. 40 of 2012 which has been dismissed even without calling upon the respondent to file the counter affidavit. The petitioner's contention is that he was posted on

that post only on 6.7.2011 and has been transferred in a very short period within a period of less than six months vide order dated 26.12.2011, which is also contrary to the policy decision of the department itself as it amounts to premature transfer of the writ petitioner. It is also submitted that some of the persons working in the department since last 25 years are not being disturbed.

2. Learned Counsel for the appellant/petitioner further submitted that one of the employees, who has been transferred by the same order, has preferred a writ petition being W.P.(S) No. 119 of 2011 before this Court wherein interim order was passed. It is submitted that in view of the above reasons, learned Single Judge should not have dismissed the writ petition of the appellant/petitioner and parity should have been maintained.

3. We have considered the submissions of the Learned Counsel for the appellant/petitioner and perused the record and the reasons given in the impugned order dated 26.12.2011. It is not in dispute that the petitioner has challenged the order dated 26.12.2011 being mala fide and no factual foundation has been laid down to prove that the order is mala fide. Admittedly, none of the persons has been impleaded as party, who may have grudge against the writ petitioner. The petitioner's contention is that he has been transferred because of the complaint lodged against the contractor on 21.11.2011, and thereafter, against Executive Engineer on 25.11.2011, which resulted transfer of the petitioner. In our opinion, this is a mere imagination of the writ petitioner and there is no reason to believe that mere lodging of complaint, that too, against one contractor and Executive Engineer, even if annoyed the Executive Engineer and because of annoyance of the Executive Engineer, even higher officers of the rank of Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary was influenced. For challenging the order on the ground of mala fide, factual foundation with material facts and reasons are required to be pleaded and mere imagination cannot serve the purpose. The contention of the writ petitioner that some other persons are holding the post since 25 years and have not been transferred, does not make the order of the writ petitioner invalid in the facts of the case and the petitioner cannot make any claim because of the simple reason that other persons holding the posts for a long period were not only allowed to hold that post but also allowed to continue on the said post for several years. The Court should not interfere in the transfer order lightly because it certainly affects the discipline in the department and it affects administrative exigencies. Certain policies are framed for transfer of employees which normally are required to be followed but if there is any deviation in such a matter i.e.; the matter of transfer, the administrative exigencies is of paramount consideration for effective maintenance of the service to the public by the persons who are serving in various departments. Here, in this case, it is an admitted fact that petitioner was appointed by the Road Construction Department of Government of Jharkhand and his services has been placed at the disposal of his department which cannot be held to be mala fide or arbitrary.

4. At this juncture, we may also observe that the petitioner's contention is that one other person preferred a writ petition being W.P.(S) No. 119 of 2011 and his writ petition has been entertained, such cannot be a ground because of the simple reason that the service of each individual has its own individual facts and is required to be examined by the facts of each case. The petitioner's case is not admittedly based on the facts of that writ petitioner whose writ petition has been entertained and to make it clear, it is not the case of that petitioner that another writ petitioner also lodged a case in the same manner and same fashion against one contractor resulting into the complaint against one Executive Engineer. Therefore, on this plea also, petitioner cannot claim any benefit.

5. Learned Counsel for the appellant also submitted that the petitioner could not have been sent back to the administrative department of Road Construction Department without obtaining consent of that department as per Rule and for that it will be suffice to state that petitioner's services has already been accepted by that department and therefore, this ground does not survive.

6. So far as question of premature transfer is concerned, we have already observed that certain policy decisions are taken for giving effect to the transfer of the employees and there may be variation in the policy, looking to the administrative exigencies which is of paramount consideration in the transfer of the employee. In view of the above reasons, this L.P.A. has no merit which is accordingly dismissed.