
(1995) 11 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 7416 of 1995

Maheshwar Labh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0027

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—This writ petition has been filed against an order of transfer by which the petitioner has been transferred to Revenue Circle Bettiah at Manihari Anchal on the post of Lower Division Clerk from Farbeshganj of Khagaria District. The said transfer order was issued vide Memo dated--3rd June, 1995. The said order has been filed by the petitioner on various grounds, namely, that the wife of the petitioner is posted as an Assistant Teacher in the Primary School, Kosi and the petitioner who is suffering from Kidney problem, has been transferred at a place which is far away from the posting of petitioner's wife and the before it is not possible for the wife to look after her husband. The other ground of challenge is that the petitioner has made a representation against the said order of transfer but the same has not been disposed of till today and as such without disposing of the said representation the impugned order of transfer cannot be given effect to.

2. Learned Counsel appearing on behalf of the petitioner has placed reliance on an unreported judgment of this Court rendered in CWJC No. 1053 of 1980 with CWJC No. 496 of 1981. In the said unreported judgment the Hon'ble Justice Lalit Mohan Sharma, as his Lordships then was, held on the basis of the counter-affidavit filed in that matter that the transfer order was passed by way of punitive measure. His Lordship was pleased to observe as follows--

A perusal of the entire counter affidavit does not admit any manner of doubt that the order of the petitioners transfer had been passed as a punitive measure. Admittedly, he was not given any opportunity to show that the allegations of inefficiency against him are incorrect. The impugned order in CWJC No. 1053 of

1980, is, therefore, violative of principles of natural justice and is quashed.

3. With profound respect to my Lord, I am humbly of the view that the principles of natural justice, notwithstanding its considerable expansion in recent years, are not as yet attracted to an order of transfer.

4. Be that as it may, this Court is of the view that the factual matrix in the said decision is not the same in this particular case. In this case from the averment of the counter-affidavit, it does not appear that the transfer order of the petitioner was made by way of punishment. In the counter-affidavit it has, however, been stated that some complaints have been received against the petitioner in respect of his functioning and it was also stated that because of the posting of the petitioner at one particular station for last 17 years and the petitioner developed vested interest and some relationship with anti-social elements of the locality and started creating nuisance in the area.

5. This Court is of the view that when a person is transferred after 17 years of his posting he cannot make any grievance against the same. An order of transfer may create hardship and difficulties to the person concerned, but that cannot vitiate the order, the guidelines or directions for posting husband and wife at one station are merely directory in nature and this has been held by the Apex Court in a case relating to transfer in the judgment of Union of India and Others Vs. S.L. Abbas, .

6. However, liberty is given to the petitioner's wife to make a representation to the appropriate authority within a period of two weeks from today for being posted near the place where the petitioner, her husband, has been posted. If such representation is filed the same should be considered by the authorities favourably and if possible disposed of by giving her a suitable posting within four weeks of filing of such representation.

7. There is no other point which is required to be considered in this case.

8. In view of the discussions made above, this Court dismisses this writ petition with the above observation. There will be no order as to costs.