
(2013) 10 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5393 of 2013

Nagendra Kumar Singh @ Nagendra Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 1 JLJR 124

Hon'ble Judges : Aparesh Kr. Singh, J

Bench : Single Bench

Advocate : Anil Kr. Sinha and Abhishek Sinha, for the Appellant; S.K. Verma for the State and Mr. Rajiv Ranjan for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kr. Singh, J.—Heard counsel for the parties. The petitioner is aggrieved by the office order dated 27th August, 2013 issued under the Signature of the Respondent No. 2-The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Department of Rural Works, Government of Jharkhand, Ranchi and communicated to the petitioner vide Memo No. 2119 dated 27th August, 2013 (Annexure-3), whereby he has been transferred from his present place of posting at Works Section, Jama Works Division, Dumka and posted in the office of the Deputy Commissioner, Deoghar. By the same notification, the private respondent (Respondent No. 4) has been posted in his place.

2. According to the petitioner, by the last notification contained in office order No. 120 dated 26th December, 2011, he was transferred from Ramgarh to Works Section under Works Division, Dumka where he joined in the month of January 2013. However, he has been taken aback because of his sudden transfer. According to the petitioner, transfer has been made without the matter being placed before the Establishment Committee and beyond the normal period in which such transfers are undertaken, as per the Circular dated 25th October, 1980 (Annexure-4) i.e. in the month of May-June or November-December of each year. The petitioner submits that he has been transferred within one and

half year and no reasons of administrative exigency has either been shown. It is further submitted that the petitioner was transferred on 3rd June 2013 which was however stayed by another office order dated 18th June, 2013 till 30th November, 2013. Therefore, the writ petition which had been preferred by him earlier being WPS No. 3434/13 was subsequently withdrawn.

3. Respondent State have filed their counter affidavit on 17th September, 2013 sworn by one Magna Tigga, son of Bijla Tigga, Under Secretary, Rural Works Department, Ranchi. At para-15, it is stated that Government usually transfer its employees on administrative grounds in special circumstances. Following the said policy of the Government, the Establishment Committee of the Rural Engineering Organization recommended the name of the petitioner and others on administrative grounds and after approval of the Government of Jharkhand, the order of transfer dated 27th August, 2013, impugned by the petitioner (Annexure-3) was issued, which is legal and justified in the eyes of law for administration of the department. Further, it has been stated in the counter affidavit that transfer is an incidence of service and petitioner has already been relieved for joining at his place of posting.

4. The petitioner seriously contested the aforesaid statement. I.A. No. 7302/2013 was also filed for initiating proceeding for making false statements against such deponent.

5. In such circumstances, on the last date, relevant records relating to issuance of the impugned notification and containing such decision of the Establishment Committee were directed to be produced today. Learned counsel for the State, on perusal of the records relating to issuance of the impugned notification, submits that no such Establishment Committee meeting was held for issuance of the impugned notification by which the present petitioner was transferred. Today, the deponent of the counter affidavit has filed I.A. No. 7871/13 in which a prayer has been made to allow amendments in the counter affidavit filed on 16th September, 2013 in Para-15 after 10th line from the top. The said deponent has made a prayer for substituting the word "Establishment Committee" by "policy of the Government, the Rural Engineering Organization recommended the name of the petitioner and others". It has been stated that the said expression "Establishment Committee" was an inadvertent typographical error in para-15 of their counter affidavit. However, no apology has been sought for such a mistake which is one of the material facts relevant for determination of the instant case.

6. Counsel for the private respondent submits that the order has been passed in administrative exigency and it has also taken into effect. The private respondent has joined at the place of posting of the petitioner i.e. at Works Section, Jama Works Division, Dumka. Therefore, the same should not be interfered with.

7. Learned Senior Counsel for the petitioner submits that the impugned notification, so far as it relates to the petitioner, is bad in law and in contravention of the prescribed procedure regulating transfer and posting of

Government Employee. In such circumstances, though the order may have been given effect to by joining of the successor i.e. the private respondent, but this Court under Article 226 of the Constitution can always interfere and quash the notification in question. Learned Senior Counsel for the petitioner has relied upon a Division Bench judgment of this Court in the case of Uttam Kujur Vs. State of Jharkhand and Others, in support of the aforesaid contention.

8. I have heard counsel for the parties and gone through the relevant materials on record. The transfer and posting of Government Servants in the State of Jharkhand is guided by the policy framed by resolution No. 3918 dated 25th October, 1980. As per the said policy, transfer and posting are done normally in the month of May-June or November-December of each year. However, such policy also provides that in special circumstances, for example, death, illness, vacancy or other administrative reasons, transfer and posting would be made at any other time subject to the conditions laid down therein. Relevant extract of para-A of the aforesaid policy which is enclosed as Annexure-4 to the writ petition is quoted hereunder:--

(A) General Policy regarding transfer and posting.--Transfer and postings will generally be done twice, i.e. in May-June, November-December of each year:

Provided that in special circumstances, e.g. death, illness, vacancy or other administrative reasons transfer and posting could be made at any other time subject to the following conditions:--

(i) in respect of officer whose transfer/posting is done with the approval of Minister or by Council of Ministers, specific prior approval of the Chief Minister has to be obtained; and

(ii) in respect of such officers and Government employees whose transfer and posting is done by subordinate officers under delegated powers of transfer, specific prior approval of the immediate superior officer is obtained.

(2) The duration of posting on any post and at any particular place will generally be for a period of 3 years. For some post or places, the period of posting may, however, be kept for 2 years which should be specified by the departments by Standing Orders.

(3)

9. Under such policy itself, it has been prescribed that such transfer is to be effected on the basis of the recommendation of the Establishment Committee. Clause-C thereof lays down formation of Establishment Committee which is quoted hereunder:--

(c) Formation of Establishment Committee.--(1) An Establishment Committee should be formed for each Department with the approval of the Departmental Minister for recommending transfer/posting of such officers whose transfer and posting is made by the Government. The Committee will consist of the following

officers;--

(i) Commissioner and Secretary.

(ii) Senior most Head of Department.

(iii) One Special Secretary/Additional Secretary.

(iv) Suitable senior most officer of the Scheduled Caste/Scheduled Tribe.

(If such a Scheduled Caste/Scheduled Tribe Officer is not available in the Department a suitable officer nominated by the Chief Minister through the Personnel and Administrative Reforms Department).

The Minister-in-charge shall frame at the beginning guideline principles to be observed by the Establishment Committee. In the same manner guideline principles shall be framed for the heads of Department with the approval of the Departmental Minister. After the Career Management Scheme has been prepared by the Department and approved by the Minister the guidelines should be modified to bring in line with the Career Management Scheme.

2. An Establishment Committee should be constituted by the Department for transfer/posting at the level of the Head of Department which shall consist of two senior officer subordinate to him and an officer of the Scheduled Caste/Scheduled Tribes, in addition to the Head of Department.

3. The department shall also constitute an Establishment Committee at the level of the Head of Office which will be presided over by the Head of Office and a minimum of three members and maximum of five including a Scheduled Caste/Scheduled Tribes member.

10. It is not in dispute that in the present case, the order of transfer of the petitioner and the private respondent has been made without the recommendation of the Establishment Committee and that too, not in the period of May-June or November-December, but in the month of August, 2013 on 27th August, 2013 vide Annexure-3 issued by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department.

11. In such eventuality where transfer/posting are not effected in the normal period of May-June or November-December, it would be evident from perusal of Para-A proviso to the policy dated 25th October, 1980 that on eventualities of death, illness, vacancy or other administrative reasons, transfer and posting could be made at any other time subject to the conditions i.e. (i) in respect of officer whose transfer/posting is done with the approval of Minister or by Council of Ministers, specific prior approval of the Chief Minister has to be obtained. In the instant case, it is evident that neither the Establishment Committee meeting was held for making such recommendation for transfer of the petitioner in the month of August, nor prior approval of the Chief Minister has been obtained. In fact, it has been made on the recommendation of the Hon"ble Minister of the Department vide Annexure-2 dated 26.8.2013. In such circumstances, the

impugned notification suffers from failure to comply with the prescribed procedure laid down by the State Government itself. This Court, in exercise of its powers under the writ jurisdiction and judicial review is required to see whether decision making process is proper in the eye of law and the guidelines framed for that purpose have been confirmed to. In the background of the aforesaid facts, the decision making process appears to be vitiated in law as well as on facts. Learned counsel appearing for the State, after going through the records, has fairly submitted that no Establishment Committee was held prior to issuance of the impugned notification.

12. In such circumstances, the impugned notification contained in Office Order No. 137 and Memo No. 2119 dated 27th August, 2013, so far as it relates to the present petitioner and the respondent No. 4, are quashed. In view of the Division Bench judgment rendered in the case of Uttam Kujur (supra), even though the impugned order of transfer have been given effect to, but since the entire decision making process leading to the issuance of the impugned notification has been vitiated which also goes to the root of the matter, the notification cannot be allowed to stand, so far it relates to the petitioner and the Respondent No. 4. In the present case, as has been noticed hereinabove, counter affidavit has been filed on behalf of the State sworn by one Magna Tigga son of Bijla Tigga who claims to be working and posted as Under Secretary, Rural Works Department, Ranchi. The affidavit has been sworn on behalf of respondent Nos. 1-3 i.e. Principal Secretary, Rural Works Department, The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Department of Rural Works and The Executive Engineer, Works Division, Rural Works Department, Dumka. Statements made at para-15 of their counter affidavit had material bearing on the outcome of the case wherein it was stated that the Establishment Committee of the Rural Engineering Organization recommended the name of the petitioner and others on administrative grounds and after approval of the Government of Jharkhand, the impugned order of transfer was issued. On the last date the records were summoned to verify whether Establishment Committee meeting was held prior to issuance of the impugned notification. Thereafter, the deponent has filed an I.A. No. 7871/13 for seeking correction in the statements made at para-15 of the said counter affidavit. However, no apology has been advanced on behalf of the said deponent. Therefore, the explanation given by the deponent in the I.A. only appears to be a face saving device. In such circumstances, the Principal Secretary of the Rural Works Department, Government of Jharkhand shall conduct an inquiry into the matter in accordance with law.

The writ petition is allowed in the aforesaid terms. I.A. No. 7302/13 stands disposed of. I.A. No. 7871/13 is dismissed.