
(2016) 08 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11011 of 2016

Nandini Kumari

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-08-2016

Acts Referred:

Citation : (2016) 3 BBCJ 383 : (2016) 4 BLJud 114

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : In CWJC No.11011 of 2016.; Mr. P. K. Shahi, Sr. Advocate and Mr. Rajeev Lochan, Advocate, for the Petitioner; Mr. P. N. Shahi, AAG 6 and Mr. P. N. Sharma, AC to AG, for the Respondent; Mr. Abhinav Shrivastava, Advocate, for the Interveners; In CWJC No.111

Final Decision : Allowed

Judgement

Mr. Ajay Kumar Tripathi, J. (Oral)—All these bunch of writ applications were clubbed together because a common Notification No.646, dated 30th of June, 2016 transferring 461 persons came to be challenged on one ground or the other.

2. All these petitioners, therefore, want quashing of the notification in relation to their transfer on the ground that the order of transfer has been effected without any application of mind or yardstick. A reading of the list itself will indicate that position because there are dead people, who have been transferred, there are people, who are going to superannuate in couple of months, who have been transferred, there are persons, who have been in their post and position for less than a year, who have been transferred and many other instances of such glaring kind have been indicated in the pleadings and averments, specially made in CWJC No.11160 of 2016.

3. Looking at the bundle of facts and the submissions, the State was directed to file a counter affidavit and explain the rational behind such en masse transfer to

which they take a stand that because of the World Bank funding and the obligation created therein most of the training centers are required to be manned by the people, who have been transferred as their skill and experience is required to be utilized in those institutions. That seems to be the primary reason or basis on which such transfers have been effected by way of justification.

4. During the course of argument learned senior counsel representing the batch of advocates on behalf of the petitioners also made a submission that the stand taken with regard to the plea of World Bank is not available in the official record or decision making process. If the original file is looked into, this position will be established. 5. To test the bona fide of the submission as well as the conduct of the respondents, the Court asked for production of the original file wherein the decision to effect transfer of these petitioners along with large number of other employees was taken.

6. To be fair to the State authorities, they did produce the original file within matter of hours. The file was gone through by the Court and also shared with the counsels. The stand of the petitioners was borne out that the decision with regard to the transfer of these petitioners was taken without any kind of application of mind and was a rushed job within two days of initiation of proposal for such transfer. The noting in the file do not indicate the basis or the parameters which was required to be used in effecting and notifying the transfer. It is unfortunate that such decisions are taken at the level of the State in such a cursory and casual manner. The Court is not willing to restrict or restrain the State authorities from exercising its powers especially in matters of transfer and that too in the season when the annual chain transfers are required to be made. But in a democratic set up, which is governed by a rule of law, at least the decision making and decision making process must reflect a process by which a decision is arrived at. Since the original file did not reflect any of such elements, therefore, the Court comes to a considered opinion that the reason for all kinds of aberrations, which have been talked about and pointed out by the petitioners in the writ applications, specially in the case of Lalan Mahto and others, is a mindless act of rushing through a list of transfer without verifying status of such persons, who were going to be affected by the order of transfer.

7. There are interveners. They are the people, who have been transferred in place of the petitioners and they are more willing to abide by the order of transfer because they seem to be the beneficiary of decision of such transfer. Learned Senior counsel representing some of the interveners tries to prevail upon the Court by making an assertion that the decision taken by the State is in fact in furtherance of a set of rules, which are reflected in the Bihar Education Code. Special emphasis has been placed on Rule 153. His further submission is that by quashing the order of transfer the same will have the effect of violating Rule 153 and the yardstick laid therein.

8. It seems that the interveners know more law, rule and governance than the State authorities do because what is being pointed out by the counsel for the

interveners is not even discussed or talked about either in the original file and the noting or in the counter affidavit, which was filed on behalf of the State. If this be so, the wisdom of the interveners cannot be used as a yardstick for deciding correctness or otherwise of the decision taken by the State authorities as a part of their right to take such decision even if it be a case of transfer.

9. The Court, therefore, will not entertain the submission on behalf of the interveners as the reason for order of transfer, which is a subject matter of challenge in the present writ applications.

10. After all these deliberations and in view of what the Court had to observe in its order dated 5.8.2016, an Interlocutory Application has now been filed on behalf of the State, which is I.A. No.6591 of 2016. The State through this I.A. has prayed for return of the original file to have a re-look into the matter afresh.

11. In view of totality of the bundle of facts and the law, the Court is left with no option but to quash the Notification No.646, dated 30th of June, 2016, at least in relation to these petitioners and allow the writ applications.

12. But since there are large number of petitioners before this Court, the original notification may not remain intact as well as coherent, therefore, it will be in the interest of administration that a fresh decision is taken in entirety by following norms and standards after due verification of the service history of the posting of the persons, who are going to be transferred or are required to be transferred, may be keeping in mind Rule 153 of the Bihar Education Code, which has been brought to the attention of this Court by the interveners.

13. The Court allows the authorities to take a fresh decision even though 30th June in terms of the circular of the State Government is well past.

14. A decision if required to be taken should be taken within a reasonable time frame preferably within a period of six weeks from today since the order has been passed in presence of learned Additional Advocate General No.6 representing the State.

15. All the writ applications are allowed in terms of the above.

16. The original file is returned to the State counsel for their use.