
(2019) 08 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16356 Of 2019

Pradeep Kumar Choubey

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Citation : (2019) 08 PAT CK 0051

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Vindhyachal Singh, Makardhwaj Upadhyay, Ajay Behari Sinha, Neeraj Raj

Final Decision : Disposed Off

Judgement

Counter and rejoinder affidavits have been filed during the course of arguments. Let both the affidavits be taken on record.

Heard the learned counsel for the petitioner and the State.

The petitioner has sought quashing of the order dated 29.07.2019 contained in Memo No. 1068(4), issued by the Director-in-Chief (Disease Control), Health Service, Government of Bihar, Patna, whereby the petitioner has been transferred in his capacity as Health Educator, Regional Health and Family Welfare Training Centre, Sheikhpura to the office of Civil Surgeon, Kishanganj on administrative grounds.

It has been submitted on behalf of the petitioner that he is due to superannuate on 30.06.2020 and has therefore less than a year to his tenure in service.

It has further been submitted that he has been suffering from age related ailments for which he has been under regular treatment of a Doctor and for such treatment he had asked for leave also for some time which was allowed, but further leave has been cancelled.

Mr. Vindhyachal Singh, learned Advocate for the petitioner has shown to this

Court a Circular of the Government issued by the Cabinet Secretariat Department way back in the year 2009 framing guidelines for transfer of the employees. It has also been submitted that if not otherwise prohibited, care should be taken before transferring an employee who is to superannuate within one year to a place of his choice, preferably his home district or the place where he intends to be posted. Both the considerations, it has been urged, has not been taken into account while passing the impugned order of transfer.

It appears from the counter affidavit that there was some complaint against the petitioner with respect to his having acquired properties disproportionate to his wealth.

In response to the aforesaid statement, learned counsel for the petitioner has submitted that he has written categorically in the rejoinder affidavit that an anonymous complaint was filed before the Vigilance Department and the complainant never turned up to ratify the complaint which he had made. Thus, it has been urged that it would be absolutely unjustified to hold that because of the petitioner having properties disproportionate to his wealth, his transfer is justified.

The law with respect to transfer is too well settled for it to be noted in the present order. Normally, the Courts of law do not interfere with the order of transfer unless the order is passed in a mala fide manner or against any proscription for transferring a person from one place to another. The post of Health Educator is a State Cadre post and a person serving on a post can be transferred at any place in the State of Bihar against sanctioned / vacant posts. But an employer ought not to ignore the convenience of the employee, more so, when the time of superannuation is round the corner, i.e., within a year in which circumstance, he is to be given an option of choice posting as far as possible and that the employee is not keeping good health.

Under the aforesaid circumstances, this Court directs the petitioner to make a detailed representation before the Director-in-Chief (Disease Control), Health Service, Government of Bihar, Patna (Respondent No. 3) within a period of two weeks, who, on receipt of such representation, shall look into the entire set of facts and shall pass a reasoned order in accordance with law within a further period of four weeks thereafter.

Till such time the representation of the petitioner is disposed off in the light of the Circular of the Government giving relaxation in the matter of transfer in the last year of service to an employee, the petitioner shall not be insisted upon for joining at the new place of posting.

With the aforesaid observation / direction, this petition stands disposed off.