

(2001) 10 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 6474 of 2001

Shankar Narain Ram and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Citation : (2001) 10 PAT CK 0006

Final Decision : Dismissed

Judgement

S.N. Jha, J.—In this batch of writ petitions the dispute relates to inter district transfer of permanent clerks of the Registration Department. By the impugned order contained in memo No. 1545 dated 30.6.2000 of the Secretary-cum-Inspector General (IG), Registration, 266 of them have been transferred from one district to another. The validity of the order is challenged on the ground that the clerks of the Registration Department belong to district cadre and therefore they cannot be transferred beyond the district. Secondly, the IG, Registration has no such power.

2. The case of the Petitioner is that in the Registration Department the establishment at the district level consists of the District Registrar who is none else than the Collector/Deputy Commissioner of the District, the District Sub Registrar and Sub Registrars, besides the ministerial staff consisting of a Head Clerk, Clerks, Record Keeper, Peons, Daftaries and Choukidars. Earlier there were two categories of clerks-permanent clerk and additional or extra clerks. On 2.12.78, by memo No. 3623, the State Government created 1000 posts of temporary clerks to be filled up from amongst the extra clerks. By memo No. 1928 dated 28.5.80 the Government laid down modality of appointment. By memo No. 23 dated 5.1.84 it was clarified that 60% posts of permanent clerks would be filled up by direct recruitment from the district panel in accordance with Circular No. 16440 dated 3.12.80 of the Personnel Department, and the remaining 40% posts would be filled up by promotion from amongst the temporary clerk, cent per cent posts of temporary clerks would be filled up by

recruitment from amongst the extra clerks on the basis of seniority in the light of memo No. 1928 dated 28.5.80. According to the Petitioners all these posts--whether extra clerks or temporary clerks or permanent clerks--are posts of district level, and hence there cannot be inter district transfer. In support of the contention reliance is placed on certain provisions of Chapter IV of the Bihar Registration Manual (in short, "the Manual") and some circulars of the State Government which I shall presently refer.

3. Reference was first made to paragraph 23 of Chapter IV of the Manual to point out that the posts mentioned therein including the posts of Head Clerk and Clerks are posts of the district establishment. Reference was then made to paragraph 23A and it was submitted that though it contemplates transfer after 5 years in the case of permanent clerks, it also gives an indication of the fact that such transfer can be made in the same district. Reference was next made to paragraph 25(i)(a) and (d) and it was submitted that the Manual contemplates recruitment of clerks from the residents of the same district which too is suggestive of the fact that they cannot later be transferred to another district. Reference in this connection was also made to Rule 19 of the Bihar Registration Rules, 1937.

4. As regards the circular, apart from circular dated 28.5.80 and 5.1.84 referred to above, reliance was placed on circular No. 454 dated 20.5.95 wherein it has been stated that the posts of clerk are district level posts. Reference was also made to circular No. 1772 dated 28.7.2000 whereby all the District Sub-Registrars have been asked to furnish the particulars of temporary clerks, working under them, for preparing seniority list of, the temporary clerk at the state level, and it was submitted that the fact that process has been initiated for preparation of the list at the State level shows that the clerks so far, even according to the Respondents, do not belong to State cadre. It was pointed out that the said circular has been issued after impugned transfers. It was submitted that as no State cadre has been formally constituted with respect to the clerks in the Registration Department, there cannot be inter district transfer. Reliance in this regard was placed on *M.G. Sharan v. State of Bihar* AIR 1970 Pat 28. Reliance was also placed on *Md. Kalimullah and Others Vs. State of Bihar and Others*,

5. The Indian Registration Act, 1908 has been enacted to consolidate the law relating to the registration of documents. Part-II of the Act contains provision relating to the establishment of the Registration Department. It provides for an Inspector General of Registration at the State level, Registrars and Sub-Registrar at the district or sub-district level and their offices. Section 7 lays down that the State Government shall establish in every district an office to be styled as the office of the Registrar and in every sub-district an office or offices to be styled as the office of Sub Registrars or office of Joint Sub-Registrars. The Act does contain any other provision relating to Composition of the district/sub-district level offices. In the Bihar Registration Rules 1937 framed u/s 69 of the Registration

Act also nothing has been paid about Registration offices at the district/sub-district level. Part I of Chapter IV of the Manual contains provisions relating to inferior establishment i.e. district or sub-district level Registration offices. "Chapter is titled "Instructions and Orders," "which suggests that it is compilation of executive instructions and orders.

6. Paragraphs 1 to 22 of the said Chapter/Part relate to the posts of the District Sub-Registrar, Joint Sub-Registrar and Sub-Registrar their duties, service conditions, recruitment (in the case of Sub-Registrars) and some related matters. Paragraphs 23 to 27 contain provisions relating to the ministerial establishment including the extra establishment, their service conditions, such as, pay, efficiency bar, duties etc. The provision relating to the transfer of the clerks (and peons) is contained in paragraph 23A, already referred to above, on "which heavy reliance is placed on behalf of the Petitioners and it would therefore be apt to quote the same so far as relevant as under:

23-A. Transfer of registration clerks and peons.--(1) All permanent clerks, other than the Head Clerks and Record-keepers of the Sadr Registration Office, shall ordinarily be transferred to other offices in the same district at prescribed intervals, once in five years, unless it becomes necessary to transfer any particular clerk at shorter intervals in the public interest. As far as possible, a clerk who has served his full term of five years in one office shall not be posted in the same office until a period of at least five years elapsed since his last leaving the office. This condition may be relaxed in cases where clerks transferred from the Sadr Office have to be brought for filling the post of Head Clerk or Record-keeper at the Sadr Office which post carry allowances.

(2)... ..

7. From bare perusal of the above provisions it is evident that it relates to tenure of the clerks rather than the cadre. Merely because it also refers to transfers "in the same district" does not mean that the clerks have district cadre. As has been held in the case of M.G. Sharan v. State of Bihar (supra) itself, a cadre has to be formally constituted, it may be by framing rule under Article 309 of the Constitution or by an executive order under Article 162 read with Article 166 of the Constitution. It would be useful to quote the relevant part of the decision as under:

A cadre has to be expressly created as it is of vital importance for conferring fundamental rights upon the employees. It may be under Article 309 of the Constitution, or it can be created by the State Government under the executive power conferred under Article 162 of the Constitution. But even under Article 162 of the Constitution, it is essential that the cadre should be formally constituted.

No Government order within the meaning of Article 162 muchless any rule under Article 309 of the Constitution has been brought to my notice on the basis of which it could be said that the Government has created cadre for the clerks in the Registration offices. Indeed, I must mention that counsel for the Petitioners

by and large fairly stated that this is the factual position. Their contention however, was that as clerks have been appointed at the district level, and being part of the district establishment of the Registration Department, they cannot be transferred without constituting a State cadre. Their contention also was that even if it be assumed that no district cadre has formally been constituted for the clerks, the Registration Manual gives sufficient indication that they cannot be transferred beyond the district. It was submitted in this regard that though Part IV of the Registration Manual contains "Instructions and Orders, in view of the notification dated 26.4.50 they would be deemed to be statutory as rule existing prior to 26.1.50. In any view, it was submitted, even if it is held that the district cadre has not been formally constituted, the Court should apply the "de facto" doctrine and allow the Petitioners to remain at the places where they are presently posted in the same district. It was further submitted that the word "ordinarily" in paragraph 23A indicates that normally clerks should not be transferred to another district except on administrative grounds or in public interest. The present case being one of chain transfer, with respect to as many as 266 clerks, it cannot be said to be transfer on administrative grounds or in public interest. I do not find any substance in the above contentions.

8. I have already stated above that paragraph 23A relates to the tenure of the clerks (other than the Head Clerks and Record-keepers). The word "ordinarily" therefore, has to be understood in that context. That is to say, ordinarily a clerk should not be transferred until he completes tenure of five years unless it becomes necessary to transfer him on shorter interval in public interest as specifically mentioned therein.

9. So far as Circulars dated 28.5.80 and 5.1.84 are concerned, they refer to the recruitment on the posts of temporary clerks or permanent clerks, and merely because such recruitment is to be made from amongst the extra clerks, in the case of temporary clerks, or from the district panel or from amongst the temporary clerks, in the case of permanent clerks, at district level, it does mean that the post of clerk is a district cadre post, in the absence of any express rule or Government order to that effect, as already stated above. The Circular dated 20.5.95 is also of little avail to the Petitioners. It is true that in paragraph 2 of that circular it has been stated that the post of clerk in the Registration Department is a post of district level but, read in context it cannot be interpreted in the manner suggested on behalf of the Petitioners. By the said circular certain clarification was made as to roster for filling up the post of clerks in the context of appointment of temporary clerks from amongst the extra clerks, in the light of the earlier decision of the Government by which 1000 posts of temporary clerks had been created, as noticed above.

10. On the other hand, the Respondents have placed reliance on letter No. 2016 dated 26.5.67 addressed to the Accountant General, Bihar, in support of the contention that the clerks in the Registration offices in the State of Bihar have State cadre. The letter so far as relevant runs as under:

I am directed to invite reference to the Government resolution contained in Finance Department's memo No. PR-G2-65-67/FII dated 10th March, 1965 and to convey the sanction of the State Government to the amalgamation of the cadre of clerks of different Registration offices in the State of Bihar with effect from 1st. of April, 1964....

In continuation of the said letter dated 26.5.67 the State Government on 15.4.71 informed all the District Registrars that by government order No. 2216 dated 26.5.67 the Government had approved the creation of joint cadre by amalgamating the cadre of clerks in the district offices, and in that context IG Registration has been appointed as the appointing authority. As such, whenever vacancy on the post of clerk occurs in the district Registration offices, recommendation may be sent to the IG Registration, after following the required procedure, for appointment against the vacancy by the IG Registration.

11. A decision to amalgamate the of the post of the clerical cadre in the district Registration offices having been taken by Government, and the government order duly communicated to the Accountant General, and the IG Registration having been appointed as the appointing authority for the clerks, I am not inclined to think that clerks came to belong to late cadre from 1967 and IG Registration, being the appointing authority, was fully competent to transfer the permanent clerks from one district to another.

12. It was submitted that in view of the fact that the knowledge of the local language or dialect is considered essential for the clerks, transfer to another district would be not only counter productive but also in the teeth of Section 19 of the Act and Rule 19 of the Registration Rules, apart from the instructions of chapter IV of the Manual.

13. I do not find any merit in this branch of submission. In the first place appointment even on the clerical posts can not be confined to the particular district. That would be violative of Article 16 of the Constitution, which prohibits any restriction on the ground only of residence. Reference may be made to decision of this Court in Anil Kumar Vs. Chief Secretary to the State Government of Bihar, Patna and Others, Second those provisions were made when Bihar was a much bigger State and in certain parts there were language constraints. That is not the position now. Deeds are written invariably in Hindi. even if they are written in English, Urdu or Bengali which are the only other languages mentioned in Rule 19 of the Bihar Registration Rules, the "local factor" is not likely to come into play. In my opinion, the provisions referred to by the counsel have become archaic and have lost their relevance.

14. As regards the power of the I.G. Registration, reference was made to Appendix 1 of the Bihar Service Code containing the details of delegated power, and it was submitted that I.G. Registration can transfer only Head Clerks or Record Keeper from one district to another. It is true that the table/appendix refers to post of Head Clerk, and Record Keeper while describing the powers of

the I.G. Registration, but it is relevant to mention that the very next item empowers the District Registrar to transfer clerks from one office to another in the same district. Naturally, he can not transfer any person beyond the district. This can be done only by an authority having jurisdiction throughout the State. If I.G. Registration is empowered to transfer a Head Clerk or Record-keeper to another, I do not think, he can not do so in the case of clerk merely because the post of clerk is not mentioned therein, especially after he has been made the appointing authority of the post vide circular dated 15.4.71 (supra). The contention in this regard is accordingly rejected.

15. The reliance on decision in the case of Md. Kalimullah v. State of Bihar (supra) is of little help to the Petitioners. That was a case of transfer of class III employees working in the Medical College and Hospital. This Court, inter alia, noticed letter No. 16(5) dated 14.1.83 of the Health Department wherein it had been stated that the cadre of class III and IV employees in the field offices will be limited to the jurisdiction of the appointing authority of the employees and accordingly held that they cannot be transferred beyond the jurisdiction of the appointing authority. The Division Bench thus accepted the contention relying on the said letter dated 14.1.83 and some other letters, referred to in the judgment. It however, appears that the decision was rendered in ignorance of a Full Bench decision of this Court in the case of Kameshwar Prasad Thakur v. State of Bihar 1991 (2) PLJR 251. The Full Bench had taken contrary view of the same government order dated 14.1.83. Even though the order specifically mentioned that decision had been taken to constitute cadre of class III and IV employees at district level, the court observed that:

apart from the question that it is merely an administrative instruction, it would be clear that this does not support the Petitioners' case. These instructions do not provide that such appointments are not transferable. On the other hand, this circular itself contemplates that the post is transferable in the sense that inter-district transfers can be made. However, certain formalities are to be complied with when such transfers are made. Accordingly, there is no merit in the contention that the Petitioners cannot be transferred from one district to another and the same is rejected.

The decision in the case of Md. Kalimullah v. State of Bihar therefore is of little help to the Petitioners, in view of the decision of the larger Bench.

16. It was brought to the notice of this Court that writ petitions challenging the same very impugned order dated 30.6.2000 were dismissed by this Court in the case of Raghunandan Sahu and Anr. v. State of Bihar and analogous cases being CWJC Nos. 2580, 2590, 2593, 2402 and 2610 of 2000(R). Letters patent appeal preferred by Bimal Kumar and others being LPA No. 330/2000 (R) was also summarily dismissed. The learned Judge while dismissing the writ petition, inter alia, relied on decisions in the cases of Shanti Kumari v. Regional Deputy Director Health Services AIR 1981 SC 1577, B. Varadha Rao Vs. State of Karnataka and Others, Union of India v. S.L. Abbas : AIR 1993 SC 244 and Mrs. Shilpi Bose and

others Vs. State of Bihar and others, besides Kusheshwar Prasad Thakur v. State of Bihar (supra). I am tempted to quote the observations in one of them viz. B. Varadha Rao Vs. State of Karnataka and Others, as under:

We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words "or other conditions of service" in juxtaposition to the preceding words "denies or varies to his disadvantage his pay, allowances, pension" in Rule 19(1)(a)j must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave etc. It is well understood that transfer of a government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and there fore does not result in any alteration of any of the conditions of service to his disadvantage. That a government servant is liable to be transferred to a similar post in the same cadre is a not mal feature and incident of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

17. The scope of judicial review against orders of transfer and posting is well settled by catena of the decisions of the Apex Court. The High Court in writ jurisdiction under Article 226 of the Constitution can interfere only where there is Violation of statutory rule or on the ground of mala fide. If I may say so, even where there is violation of any rule unless it is shown that the prejudice is likely to be caused by such transfer the Court may "decline to interfere considering that transfer is an incident of service. Recently, in the case of State of U.P. Vs. Harendra Arora and Another, while considering the effect of non-furnishing of the copy of the enquiry report in a departmental proceeding, the Supreme Court held that unless the delinquent establishes that he has suffered prejudice by omission to furnish copy, it would not be fatal to the impugned decision. Though, this was said so generally in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the principle of prejudice has been extended to cases where it is the statutory requirement to furnish copy of the enquiry report. [Thus, even in a case of non-compliance of a statutory provision, unless it is shown that prejudice has been caused thereby, the person aggrieved may not be granted any relief in writ jurisdiction.

18. Before I conclude the discussion it would only be fair to the Respondents to mention that the reasons for transferring the permanent clerks to another district, *inter alia*, are said to be their long stay in (the same district making them vulnerable [to influence in the working of the office, [Inefficiency and public interest. The registration clerks had failed to perform their duties up to the required standard Resulting in piling up of documents pending completion of the registration process, the Government accordingly decided to transfer such of the clerks who had stayed in particular districts for more than 0 years in public

interest. In the above remises, I doubt, if it would be appropriate to interfere with the impugned orders on technicalities even if they were on the side of the Petitioners.

19. In the result, I do not find any merit in these writ petitions which are accordingly dismissed. The interim orders stand vacated.