
(2013) 10 JH CK 0059
In the Jharkhand High Court
Case No : WP (S) No. 3715 of 2013

Shankar Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 2 AJR 162 : (2013) 4 JLJR 594

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajeev Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The grievance of the petitioner is that by notification contained in Memo No. 3876 dated 7th May, 2013 (Annexure-5) to the writ application, he has been transferred from his present place of posting as Circle Officer, Mahagama, Godda to the post of Executive Magistrate, East Singhbhum, Jamshedpur. The petitioner admittedly is an officer of Jharkhand Administrative Services. The services of the petitioner were handed over to the Land Reforms & Revenue Department by notification contained in Memo No. 7932 dated 28th December, 2010 (Annexure-1) to the writ application wherein his name figures at serial No. 53. Thereafter the Land Reforms & Revenue Department posted him as Circle Officer, Pathargama, District Godda vide Notification No. 1566 contained in Memo No. 1570 dated 18th May, 2012 (Annexure-2). The petitioner submitted his joining on the post of Circle Officer, Pathargama, Godda on 19th May, 2012.

2. It is the case of the petitioner that vide impugned notification dated 7th May, 2013 issued by Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand, he has been transferred from his present place of posting as Circle Officer, Mahagama, Godda to the post of Executive Magistrate, East Singhbhum, Jamshedpur.

3. Learned counsel for the petitioner assails the impugned notification, inter alia, on the grounds that without any order of repatriation of services of the petitioner to the Parent Department, Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand has suddenly transferred the petitioner within one year of his posting at Mahagama, which is bad in law and without jurisdiction. It is further submitted that no one else has been posted in his place by the impugned notification. However, by way of an interim arrangement made by Deputy Commissioner, Godda the charge of the post of Circle Officer, Mahagama, Godda was unilaterally handed over to the Block Development Officer, Mahagama, which is arbitrary and in the teeth of Rule 59 of the Jharkhand Service Code. It is contained in Memo No. 433 Godda dated 20th August, 2013 being office order dated 88 of 2013 issued by the Deputy Commissioner, Godda.

4. The petitioner by way of an interlocutory application being I.A. No. 7121 of 2013 had prayed for keeping the charge report dated 21st August, 2013 (Annexure-7/1) in abeyance pending decision in the present writ application. Learned counsel further submits that a subsequent notification contained in Memo No. 8021 dated 3rd September, 2013 issued by the Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand indicates that services of such officers, who were placed before Land Reforms & Revenue Department would continue to remain in the said department till their services are not handed over to the Rural Development Department. He also relies upon notification dated 3rd September, 2013 contained in Memo No. 8022 in similar terms in relation to officers posted as Block Development Officers and whose services were handed over to the Rural Development Department. It is also indicated therein that so long their services are not handed over to the Land Reforms & Revenue Department they shall remain under the Rural Development Department.

5. Learned counsel for the petitioner submits that though such a discreet and proper arrangement was made by notifications dated 3rd September, 2013 which only reinforces the case of the petitioner, but in the case of the petitioner his transfer has been made without even taking back the services of the petitioner from the Land Revenue & Reforms Department and posted him as Executive Magistrate, East Singhbhum, Jamshedpur within one year of his posting as Circle Officer, Mahagama by the Land Revenue & Reforms Department. The impugned notification is therefore bad in law.

6. The respondents have appeared. Counter affidavit has been filed by respondent Nos. 2 & 3 being the officials of Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand as also respondent No. 4 being Deputy Commissioner, Godda. They have also filed Supplementary Counter Affidavit today.

7. It is the case of the Respondents-State as brought on record by way of affidavit filed by the Personnel, Administrative Reforms & Rajbhasa Department

that because of an exigency of situation created on termination of certain newly recruited officers in Jharkhand appointed under 2nd Civil Service Exam, several posts of Block Development Officers and Circle Officers were rendered vacant. In such circumstances, the Secretaries of Rural Development Department, Land Reforms and Revenue Department and Personnel, Administrative Reforms & Rajbhasa Department by a meeting held on 28th June 2012 arrived at a conscious decision which is contained at Annexure-A to the counter affidavit. Learned counsel for the Respondents-State submits that under the said decision the services of such officers were to be placed in dual charge of Block Development Officers and Circle Officers of such Block having a much larger area which were so identified for such purposes after approval of the Minister of the concerned department. It is submitted that in such circumstances, the petitioner was posted in a block which was small in size and no such arrangements were made for giving him charge as Block Development Officer also at Mahagama Block. Thereafter, the Personnel, Administrative Reforms & Rajbhasa Department, which is the Parent Department of the petitioner has chosen to effect the order of transfer posting him on a higher post of Executive Magistrate at East Sihghbhum, Jamshedpur on taking into account developments which have taken place because of joining of the officers (whose services were earlier terminated), in view of the interim order passed by Hon'ble Apex court. The petitioner should therefore not complain as he has been posted at higher post. However, learned counsel for the respondents is not able to answer the legal issues as to how after the services of the petitioner were handed over vide notification dated 28th December, 2010 (Annexure-1) to the Land Revenue and Reforms Department issued by Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand, without the services of the petitioner being repatriated to the said Parent Department by any subsequent notification, he could be transferred by the Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand by impugned notification.

8. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned order. The issue involved in the present writ application which relates to an order of transfer of the petitioner issued by the Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand on 7th May, 2013 (Annexure-5) is whether without repatriation of the services of the petitioner from the Land Revenue & Reforms Department, the Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand could have passed an order of his transfer in the manner which has been done.

9. The respondents have relied upon a minutes of the meeting which is enclosed as Annexure-A to the counter affidavit dated 26th June, 2012. Perusal of the said minutes itself indicates at paragraph 4 that the two concerned departments of Land Reforms and Revenue and Rural Development Department where the departments authorized to effect the transfer and posting of such officers whose services were placed under the said department. It appears that the services of the petitioners had been placed with the Land Revenue & Reforms Department

much earlier vide notification dated 28th December, 2010 itself issued by the Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand (Annexure-1). The previous order of transfer of posting of the petitioner as Circle Officer, Mahagama was also issued by the Land Reforms & Revenue Department on 18th May, 2012 (Annexure-2). No order of repatriation of the present petitioner to the Parent Department of Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand has been issued thereafter. As a matter of fact, perusal of notification contained in Memo No. 8021 and 8022 dated 3rd September, 2013 issued by the Personnel, Administrative Reforms & Rajbhasa Department, Govt. of Jharkhand itself shows that the concerned Land Revenue & Reforms Department and the Rural Development Department have been allowed to retain services of such officers placed with them till their services are allowed to another department. The aforesaid notification also appears in line with the administrative instruction which govern the functioning of the respondents in the matter of placing of service of one or other officers in other Departments. However, from perusal of the aforesaid records itself it appears that without repatriation of the petitioner's service from the Land Revenue & Reforms Department to the Personnel, Administrative Reforms & Rajbhasa Department, the impugned order of transfer has been effected which apparently is not justified in law. In I.A. No. 4238 of 2013, by an interim order dated 23.8.2013, it was also observed that if the petitioner has not been relieved from his place of posting, he shall not be relieved. As per the officer order No. 88 of 2013 contained in Memo No. 433 dated 20.8.2013 issued by the Deputy Commissioner, Godda brought on record in the instant I.A. the Block Development Officer, Mahagama was given additional charge of the post of Circle Officer, Mahagama where the petitioner was posted. It is also obvious that no one has been substantively posted in place of the petitioner.

10. In the aforesaid facts and circumstances, therefore the impugned order of transfer so far as the petitioner is concerned, appears to be in contravention of the norms and procedures laid down for effecting transfer of officers whose services are placed in another Department by a conscious decision of the parent department itself. It is not in dispute that in case of any administrative exigency or for any valid reason the transfer of such officers can be effected by the department where the service of such employee has been placed, as transfer is only an incidence of service. Therefore, the laid down procedure seems to have been deviated in the present case. In such circumstances, the impugned order of transfer so far as it relates to the petitioner cannot be sustained in law and it is accordingly quashed. Consequently, the petitioner will be entitled to continue at his present place of posting i.e. as Circle Officer, Mahagama, Godda. Though the petitioner may have been relieved because of arrangement made on the district level by the order of the Deputy Commissioner, in view of quashing of the impugned notification and in view of the proposition of law laid down in the case of Uttam Kujur Vs. State of Jharkhand and Others, and the fact that no other person has been posted at his place, the petitioner would be entitled to continue

at the present place of posting. However, it would be open to the Land Reforms and Revenue Department, in their wisdom to repatriate the services of the petitioner and/or any other officer to the Parent. Department or even the Parent Department to recall his services, if it is required. Needless to say it would be open to the Land Reforms and Revenue Department also otherwise to place the petitioner in any other place of posting dependent upon any administrative exigency or for valid reason.

11. It would be open to the petitioner to approach the competent authority on question of release of salary for the intervening period, upon quashing of the impugned order of notification which shall be considered in accordance with law within a reasonable period preferably 8 weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed in the aforesaid manner. Consequently, I.A. No. 4238 of 2013 and I.A. No. 7121 of 2013 are also disposed of.