
(2006) 01 PAT CK 0105
In the Patna High Court
Case No : CWJC No. 15594 of 2005

Shiva Kant Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Citation : (2006) 2 PLJR 166

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. Shashi Anugrah Narain for the petitioner, and Mr. S.N. Pathak, learned Govt. Pleader No. I. According to the writ petition, the petitioner is a member of the Bihar Medical Service, and is in the substantive rank of Civil Surgeon. By an earlier order dated 28.4.2005 (Annexure 2), he was transferred from the post of District Medical Officer, Madhubani, to the post of Civil Surgeon, Begusarai, which he joined. On the heels of it came the impugned order dated 30.4.2005 (Annexure 1), whereby he has been transferred from Begusarai to the post of Deputy Chief Medical Officer, Headquarters Office, Patna, The petitioner complains before this Court that the earlier order of transfer was a routine and general transfer, whereas he has by the impugned order been singled out. He further submits that in view of the stand taken by the respondent authorities in the counter affidavit and the surrounding circumstances, an attitude of mala fide attributable to the respondent authorities is clearly discernible. It is further submitted that the post of Civil Surgeon at Begusarai has not so far been filled up. He lastly submits that the petitioner shall superannuate from the services of the Bihar Government with effect from September 2007, and he has unblemished record of service apart from the fact that his long tenure of 32 years.

2. Learned Govt. Pleader has placed his counter affidavit and has supported the impugned action. He relies on the following reported judgments:-

- i. Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, ;
- ii. (Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another,);
- iii. State of U.P. and Others Vs. Gobardhan Lal, .

3. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appears on a perusal of the counter affidavit that serious allegations have been levelled against the petitioner with respect to his functioning at Begusarai and a departmental proceeding has already been initiated. Learned Government Counsel has placed before me, copies of the Government Notification dated 2.1.2006 and the chargesheet, and have also been served on learned counsel for the petitioner during the course of submissions. It thus appears to me that the petitioner has been validly transferred from his place of posting so that the departmental proceeding is objectively and fairly carried out away from sphere of jurisdiction.

4. Learned Govt, pleader has rightly relied on the aforesaid judgments. The Supreme Court has held in the case of State of Uttar Pradesh vs. Gobardhan Lal (supra) that transfer is a prerogative of the authorities concerned and court should not normally interfere therewith except (i) transfer order shown to be vitiated by mala fides, or (ii) in violation of any statutory provision, or (iii) has been passed by an authority not competent to pass such an order. It has further been observed that the allegation of mala fides must be based on concrete material and must inspire confidence of the court. The judgment of the Supreme Court in the case of Union of India vs. Janardhan Debanath (supra) equally relevant in the present context. That was a case where the employee was transferred on the ground that he was "undesirable", as he had misbehaved. The Supreme Court observed that it was not necessary that such a transfer should have been preceded by a departmental enquiry unless it adversely affects the service conditions or status or service prospects or leading to penal consequences, such a transfer order is valid and need not be preceded by a departmental enquiry. It was further observed therein that prima facie satisfaction of the authority concerned based on contemporary reports is sufficient. Utmost latitude should be given to the department concerned to enforce discipline, decency and decorum in public service. Propriety of such an order has to be determined by the employer upon the administrative necessities and the extent of solution thereof.

5. Insofar as the present case is concerned, the impugned order of transfer has been passed in view of the allegations against the petitioner at Begusarai and has been transferred followed by a departmental proceeding. The respondent authorities have, therefore, rightly removed him from the scene so that an objective and impartial enquiry is conducted uninfluenced by the petitioner's presence at Begusarai. I do not find any infirmity in the impugned order. The writ petition has no merit. It is accordingly dismissed.