

(2003) 09 JH CK 0125

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4127 of 2003

Shree Nath Pal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 591

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Banerjee and A.K. Pandey, for the Appellant; Ram Balak Mahto, for the respondent No. 7 and Ritu Kumar, GP IV, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Petitioner has challenged the Notification No. 6447 dated 11.8.2003 whereby the earlier departmental Notification No. 4540 dated 26.6.2003 in relation to the transfer of the petitioner has been stayed. The said notification has been challenged as being illegal, arbitrary, capricious, malafide and on extraneous consideration.

2. Petitioner was posted as Executive Engineer. Rural Engineering Organization, Ranchi. By Notification dated 26.6.2003 petitioner was transferred and posted as Executive Engineer, N.R.E.P. Hazaribagh in place of respondent No. 7, Samendra Kishore Srivastava who was transferred by the said notification from N.R.E.P. Hazaribagh to the post of Technical Advisor to the Superintending Engineer, Dumka.

3. Petitioner's case is that pursuant to the order of transfer, he joined at the transferred post at Hazaribagh on 7.7.2003, The Deputy Development Commissioner, Hazaribagh vide his letter dated 16.7.2003 directed respondent No. 7 to hand over charge of Executive Engineer, N.R.E.P. Hazaribagh to the petitioner within three days as the petitioner joined on 7.7.2003 and a copy of

the same was communicated to respondent No. 7 for information and necessary compliance. Similarly, the Deputy Commissioner vide his letter dated 18.7.2003 directed respondent No. 7 to hand over charge to the petitioner forthwith. It is stated by the petitioner that by letter dated 23.7.2003 he informed respondent No. 6, Deputy Development Commissioner, Hazaribagh about his joining at a new place of posting on 7.7.2003. Petitioner also informed the Secretary, Rural Engineering Organization, Jharkhand, Ranchi assuming the charge of the Office of Executive Engineer at Hazaribagh. However, all of a sudden another notification was issued on 11.8.2003 staying the order of transfer of the petitioner although petitioner said to have assumed charge of the post of Executive Engineer at Hazaribagh.

4. The respondent State has filed a very perfunctory counter affidavit stating that petitioner did not inform the department regarding his joining on 7.7.2003 and even if he gave his joining without being relieved from his previous post. It is stated that against the order of transfer the Deputy Commissioner, Hazaribagh has not relieved respondent No. 7 from the vacant post of Executive Engineer, N.R.E.P. and as such post was not lying vacant.

5. Respondent No. 7 has also filed a separate counter affidavit wherein he has stated that petitioner did not assumed charge of the Office from respondent No. 7 because he was on medical leave from 18.7.2003 to 11.8.2003. It is contended by respondent No. 7 that petitioner might have given report of his joining on the post but unless charge is assumed by him he shall not be deemed to have joined on the post. Various other technical pleas have been taken in the counter affidavit.

6. I have heard Mr. M.M. Banerjee, learned counsel for the petitioner, Mrs. Ritu Kumar, GP-IV for the State and Mr. Ram Balak Mahto, learned senior counsel appearing for respondent No. 7.

7. Mr. Banerjee, on the one hand submitted that subsequent notification staying transfer was issued after the petitioner assumed charge which was confirmed by the Deputy Commissioner and the Deputy Development Commissioner. Learned counsel submitted that transfer order was stayed at the instance of the Minister who sent a letter to the department and also on the basis of representation made by the wife of respondent No. 7.

8. Mr. Ram Balak Mahto, learned senior counsel on the other hand made his submission mainly on legal aspect of the matter. Learned counsel firstly submitted that unless and until malafide is established either by facts or conduct transfer order issued on administrative ground may not be interfered with. Learned counsel then submitted giving preference to Rule 59 of the Service Code that there must be a process of hand over and take over charge and the petitioner might have given report of his joining on the post but unless charge is assumed by him, he shall not be deemed to have joined on the post.

9. The question that needs consideration by this Court is as to whether

subsequent notification dated 11.8.2003 staying the earlier notification is malafide ?

10. As noticed above, petitioner has categorically pleaded that pursuant to the order of transfer vide notification dated 26.6.2003 petitioner was transferred and posted as Executive Engineer, N.R.E.P., Hazaribagh and respondent No. 7 who was posted as Executive Engineer, Hazaribagh was transferred as technical Advisor to the Superintending Engineer, R.E.O., Work Circle, Dumka. Petitioner submitted his joining on 7.7.2003 on the post of Executive Engineer. N.R.E.R. Hazaribagh and the Deputy Development Commissioner, Hazaribagh vide his order dated 16.7.2003 directed respondent No. 7 to hand over charge of Executive Engineer. N.E.R.P., Hazaribagh to the petitioner within three days. A copy of the said letter has been annexed as Annexure 2 to the writ application. The Deputy Commissioner, Hazaribagh also issued office order dated 18.7.2003 directing respondent No. 7 to hand over charge to the petitioner forthwith and to furnish all the details of cheques and other relevant information in the office of the Deputy Commissioner, Hazaribagh. The Treasury Officer, Hazaribagh was also directed not to pay any bill/cheque of respondent No. 7. A copy of the letter dated 18.7.2003 was communicated to respondent No. 7 for information and necessary action. It would be more appropriate to quote office order dated 18.7.2003, which reads as under :

UPAYUKTA KA KARYALAYA, HAZARIBAGH (GOPNIYA SAKHA) AADESH

Shri Samarendra Kishore Srivas-tava, Karyapalak Abhiyanta, Rashtriya Gramin Niyojan Karyakram, Hazaribagh apna prabhar nav- padasthapit Karyapalak Abhiyanta Sri Shrinath Pal to Aaj hi saup kar anupalan prativedan adhocastakshri ko samarpit karen. Kosagar Padadhikari, Hazaribagh inke hastakshar se nirgat koi bhi vipatra/cheques aadi parit nahin karenge. Prachan Sahayak, Karyapalak Abhiyanta, N.R.E.P. Karyalay Hazaribagh koi bhi Sanchika Sri Srivastava sa samaksh puasthapit nahin karenge. Pradhan Sahayak diknank 1.7.2003 ke bad se kate gaye cheques aadi ki vivrani aaj hi Gopniya Sakha me uplabdh karana sunischit karenge."

Sd/- UPAYUKTA, Hazaribagh Dated 18.7.2003

11. Curiously enough, respondent No. 7 went on leave from 18.7.2003 after knowing the office order issued by the Deputy Commissioner and continuously remained on leave till 11.8.2003. In the meantime, respondent No. 7 after taking leave obtained a note sheet from the Minister concerned to the department in the form of a request letter by the Minister to the Government allowing respondent No. 7 to continue at Hazaribagh. Respondent No. 7 also got a representation filed through his wife and the department in spite of the fact that earlier notification was given effect to issued another notification staying transfer order of respondent No. 7. It is interesting to note that respondent No. 7 continued on medical leave till 11.8.2003, when he succeeded in getting another notification on 11.8.2003 staying earlier notification of his transfer dated

26.6.2003. These facts are fully established and demonstrate malice in fact with full and elaborate particulars and there are sufficient materials which have been brought on record from which a strong inference of malice in fact can be drawn for issuing impugned notification dated 11.8.2003 staying transfer of the petitioner, particularly when transfer order was given effect to inasmuch as the petitioner assumed charges as Executive Engineer, N.R.E.P., Hazaribagh. When gross illegality and malafide is established in issuing the impugned notification then the same cannot be allowed to sustain merely because of technical irregularities.

12. Taking into consideration the entire facts of the case and the conduct of respondent No. 7. I am of the definite view that action of the respondent-State in issuing impugned notification staying the order of transfer is illegal, arbitrary and malafide.

13. This writ application is, therefore, allowed and the impugned notification dated 11.8.2003 is quashed. Respondent No. 7 is directed to join at his transferred post pursuant to order of transfer.