
(2009) 01 JH CK 0133
In the Jharkhand High Court

Sudhir Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 01 JH CK 0133

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application is to the order dated 28.02.2008 vide Memo No. 54/V, Mohanpur issued from the office of the Commissioner, Santhal Pargana, Dumka whereby the petitioner has been transferred from Mohanpur Child Development Project Office, District-Deoghar to the Child Development Project Office, Jama, District - Dumka.

2. The petitioner was appointed as Driver in the Department of Social Welfare, Deoghar. Thereafter by the order of the Director, Social Welfare Department dated 22.02.2006 he was transferred from the office of the Child Development Project Officer, Mohanpur, District Deoghar to Child Development Project Office, Berhat where he joined on 28.02.2006. Again by the order of the Commissioner, Santhal Pargana, Dumka he was transferred from Berhat to the Office of the Child Development Project Officer, Paljori on 04.12.2006 where he joined on 06.12.2006. By a further order of his transfer passed by the Commissioner, Santhal Pargana, Dumka dated 27.04.2007 he was transferred from Paljori to the office of Child Development Project Officer, Taljhari in the district of Deoghar in a purported vacant post. In compliance with the order, the petitioner joined his post in the office of Child Development Project Officer, Taljhari on 13.05.2007. However, in spite of submitting his joining letter on 13.05.2007, the Child Development Project Officer sent his services back to the office of Commissioner, Santhal Pargana, Dumka and consequently he joined the office of the Commissioner, Santhal Pargana, Dumka on 14.05.2007. By yet another order

dated 06.08.2007 of the Regional Development Commissioner, Dumka he was again transferred to the office of Child Development Project Officer, Mohanpur on 07.08.2007.

The petitioner's grievance is that besides being subjected to as many as six transfers during a period of two years, he has not been paid his salary since the month of December, 2005. The petitioner filed several representations demanding payment of his salary and ultimately on considering his representation, the Commissioner, Dumka vide his letter dated 10.10.2007 directed the C.D.P.O., Mohanpur to pay the entire arrears of salary to the petitioner including salary for the period during which the petitioner was kept waiting for his posting. When despite such direction of the Commissioner, the petitioner was not paid his salary, he filed a writ petition before this Court vide W.P.(S) No. 946 of 2008 praying for a direction to the respondent authorities to pay the entire arrears of his salary along with statutory interest.

On being informed about the writ petition filed by the petitioner, the respondent authorities had again issued the impugned order of his transfer from Mohanpur to Jama. The petitioner has assailed the impugned order of his transfer as being illegal, arbitrary and prompted by malafide reasons only in order to harass the petitioner. The petitioner submits that he has been suffering from Nephrelogical disorders and is undergoing medical treatment and the frequent transfers have been affecting his health.

3. A counter affidavit has been filed on behalf of the respondents. It is sought to be explained that the petitioner was appointed as Jeep Driver by the Department of Social Welfare and he joined in the office of Child Development Project Officer, Mohanpur on 07.10.1987 where he remained continuously for 17 years in service. The post of Driver is transferable from one district to other by the order of the Commissioner. Several female employees of the Child Development Project Officer, Mohanpur had made serious allegations of petitioner's ill-behaviour. He was therefore transferred from Mohanpur to Paljori within the district of Deoghar on administrative grounds on 13.09.2004. Two years later, by order dated 22.02.2006 he was transferred from Mohanpur district Deoghar to the Child Development Project Office, Berhat in the district of Sahebganj on administrative grounds. Although he joined at Berhat but he remained absent from duty from 01.04.2006 to 04.12.2006 without prior permission from the competent authority. Thereafter he was transferred from Berhat to Palajori by order dated 04.12.2006 issued by the Commissioner, Dumka where he joined on 06.12.2006. However, since the post of Jeep Driver of Child Development Project, Palajori was abolished according to the new staffing pattern, it was not possible to make payment of his salary from Palajori. As such on the recommendation of the Deputy Development Commissioner, Deoghar, the petitioner was again transferred from Palajori to Taljhari in the district of Sahebganj on the sanctioned post of Jeep Driver in the office of Child Development Project Officer, Taljhari. However, since the post was not vacant on account of another Jeep Driver

Sammual Baxi had already joined the post, under the orders of the Director, Social Welfare, Jharkhand, therefore, the petitioner's joining at Taljhari could not be accepted and his service was returned to the office of the Respondent No. 2. The petitioner was kept waiting for posting from 15.05.2007 to 06.08.2007. Later, on the petitioner's own application, he was posted in the office of Child Development Project Officer, Mohanpur district Deoghar by the order dated 06.08.2007 of the Regional Development Commissioner, Dumka. Admitting the fact that the petitioner was again transferred from Mohanpur to Jama in the district of Dumka, it is explained that such transfer was made on administrative grounds on 08.02.2008 along with other employees under the recommendation of the Divisional Establishment Committee. After issuance of the order of his transfer from Mohanpur to Jama, the petitioner was relieved from his duty from the office of Child Development Project Officer, Mohanpur to enable him to join at Jama.

The stand taken by the respondent is that the petitioner has not challenged the order of his transfer dated 08.02.2008 by which he was transferred from Mohanpur to Jama. The impugned Annexure-5 dated 28.02.2008 is only a consequential order by which the petitioner has been relieved by the Respondent No. 4 from Mohanpur to enable him to join at Jama.

4. From the counter affidavit of the respondents the facts which emerge are that admittedly the petitioner was transferred from one place to another within short intervals. However, the circumstances under which these transfer orders were passed, have also been explained. One of the circumstance being the alleged complaint received from the female employees against the petitioner and the other being that the sanctioned post to which the petitioner was transferred, was not vacant and available for the petitioner's posting. It has also been stated that under such compulsive circumstances the orders of the petitioner's transfer though frequently made, had to be taken on administrative exigencies. It further appears that the last order of his transfer, of which the petitioner appears to be aggrieved, is the order of his transfer from Mohanpur to Jama by the order of the Respondent No. 2 on 08.02.2008 on the basis of the recommendation of the Divisional Establishment Committee, the resolution of which was taken at its meeting held on 16.01.2008. The order which is impugned in this writ application is Memo No. 54/V/Mohanpur dated 28.02.2008 (Annexure-5), appears to be a consequential order of relieving the petitioner from his post at Mohanpur on the basis of his transfer order dated 08.02.2008. As rightly pointed out by the learned counsel for the respondents, the main order dated 08.02.2008 of his transfer has not been challenged by the petitioner and as such his challenge to the consequential order (Annexure-5) would be of no relevance.

Furthermore, except stating his presumption that the order of relieving him from his post at Mohanpur was on account of the grudge of the authorities due to the writ application filed by him demanding payment of his salary, the petitioner has not pointed out any such circumstance which could demonstrate that the

respondent authorities were impelled by any mala-fide motives in passing the orders of the petitioner's transfer. The last order of his transfer against which the petitioner appears to be aggrieved has been passed by the Divisional Establishment Committee by way of a general transfer of not only the petitioner but several other employees. The mere fact that such transfer in respect of the petitioner came to be effected within a short interval after his earlier transfer, in itself cannot be considered as illegal and arbitrary actions on the part of the respondents.

It is true that under the policy of procedure regarding transfer and posting of Government Servants, the general policy stipulates that the duration of posting on any post and at any place will be generally for a period of three years but the Rule also provides that in special circumstances like death, illness, vacancy or any administrative reasons, transfer and posting could be made at any other time.

5. As noted above, the transfer of the petitioner was made entirely on administrative exigencies that too pursuant to the recommendation of the Divisional Establishment Committee. There being no circumstance to indicate any mala-fide or arbitrariness on the part of the respondents and the order impugned in this case being only a consequential order made pursuant to the petitioner's order of transfer, I find no merit in this application. Accordingly, this writ application is dismissed.