
(2006) 01 PAT CK 0061
In the Patna High Court
Case No : CWJC No. 1058 of 2006

Surendra Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 51A

Citation : (2006) 1 PLJR 654

Hon'ble Judges : J.N. Bhatt, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Arun Kumar Tiwari, for the Appellant; P.K. Shahi, for the Respondent

Final Decision : Dismissed

Judgement

1. The transferred employees of the Revenue Department, who have been transferred within the District from one Block to the other, have questioned the legality and validity of that order of transfers dated 31st December, 2005, inter alia, contending that it is mala fide and that it is mass transfers. By virtue of the impugned order recorded by the Collector, Patna, the employees of the Revenue Department in the District of Patna, came to be transferred within the District. Out of 176 actual strength, only 150 employees are working, and out of which 137 revenue employees have been directed to be transferred "inter se" in departments within the District. Needless to reiterate that the transfer is an incident of service and this is always open for the master of the management concerned to effect transfer for the larger public interest and for the administrative exigencies. The transfer of Class III & Class IV employees is permissible under the Service Conditions and Rules, about which there is no dispute. A large scale transfers, now, branded as mass transfers cannot be questioned, merely, on the ground that there is a greater number of transfers. Paramount consideration in the public employment has been the public interest and the administrative exigencies. Ordinarily, we do not enter into the merits of the matter in a Public Interest Litigation. But, in the present matter, we have

gone into the merits because in this case the employees, who are under order of transfer, have not reported at the transferred place, which, obviously, would have an adverse impact on the administrative mechanism.

2. The General Secretary of the Bihar State Land Reform Karmchari Sangh has invoked the Constitutional Writ Jurisdiction under Article 226 of the Constitution of India and that, too, under the banner of the Public Interest Litigation against the order of transfers from one Block to the other within the District, which is, admittedly, permissible under the Service Conditions and Rules, and very vague and general allegations are made by questioning the impugned order of transfers. Let it be mentioned, at this stage, that the strength of the Sangh or Union lies in proper performance of the duties while claiming or proclaiming the right of the Union. Regardless of the provisions of the Article 51A of the Constitution of India, the order of transfer, which is an incident of service and which is a part and parcel of the terms and conditions of the public employment, cannot be permitted to be thwarted and that, too, by resorting to the Constitutional Writ Remedy, which is, in essence, prerogative, equitable, discretionary and plenary jurisdiction. It is designed and aimed at ameliorating and not to perpetrate the duty provided in the service conditions. Mere vague and general allegations of mala fide without naming a person is not an answer. It will be only an allegation and without any supporting material cannot be considered sufficient to question the order of transfers.

3. Master or the management has its own role to play. It or he has discretion to transfer the employees in the larger interest of the administration, as well as, in the public interest, as well as, administrative exigencies. Apart from the fact that there is no any substance in the allegation as made in the present petition, there is no even slight material, which would entitle the petitioner in the representative capacity as a General Secretary of the Union to question and stall the entire order of transfers. The Constitutional Writ Remedy is provided to project, protect, preserve and conserve the rights and not to perpetrate them.

4. We are sorry to observe here that a very vital and potent in the armory of the administrative of justice like a Public Interest Litigation is sought to be abused. Therefore, even from the plain perusal of the plaint and the supporting material, we are of the opinion that this petition is, totally, without any substance and merits and deserves to be summarily rejected at the threshold, with a direction to the Collector to make an endorsement in the service record of each employee whose cause is taken by the General Secretary and with a further direction to the petitioner-General Secretary to pay the exemplary cost of Rs. 5000/- (five thousand) before the Registry of this Court within a period of two weeks from today and that amount on being paid would be deposited to the High Court Legal Services Committee Account. Since more than 24 days period has expired from the date of passing of the order of transfers and the transferees have not yet reported to the transferred station, they are directed to report to the transferred place within two weeks from today, failing which further directions can be sought.

by the respondents-authorities for passing further necessary appropriate order in this behalf. With this observation, the petition shall stand dismissed.