

(2008) 07 PAT CK 0122
In the Patna High Court
Case No : LPA No. 193 of 2008

The State of Bihar and Others

APPELLANT

Vs

Aftab Ahmad

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Citation : (2008) 56 BLJR 2705 : (2009) 120 FLR 373 : (2008) 4 PLJR 236

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Lalit Kishore, AAG III and Satyabir Bharti, for the Appellant; Manish, for the Respondent

Final Decision : Allowed

Judgement

1. The Letters Patent Appeal is admitted.
2. In view of the short controversy that has been raised in the appeal, we are satisfied that this appeal deserves to be heard and decided at this stage itself and we proceed accordingly.
3. Aftab Ahmad, the present respondent, is employed as an Urdu translator under the Urdu Directorate, Rajbhasha Department, Government of Bihar, Patna. By an order dated 20th June, 2005, he has been transferred from Sarairanjan Block, Samastipur to Madhubani Block in the district of West Champaran. His wife is working as an Assistant Teacher in Girls High School, Samastipur. He made a representation to the concerned authority for his posting at the place his wife was posted. His grievance is that instead of acceding his request, he has been transferred to the Collectorate, Begusarai vide office order dated 30th June, 2006. He challenged the said order by filing writ petition (C.W.J.C. No. 14374 of 2007) before this Court. The Single Judge by his order dated 5th December, 2007 has allowed the writ petition and quashed and set aside the order dated 30th June, 2006. The Single Judge has directed the concerned authority to consider the representation of the present respondent and allow him to work at

the place where his wife was working. The Single Judge also observed that in the event it was felt that it would be prudent to keep the present respondent out of Sarairanjan Block, Samastipur, it would be open to the State to post the present respondent at such place as it deems fit and proper and if the same is away from Samastipur, to also post his wife at the same place.

4. In a matter of transfer of an employee, it has always to be kept in mind that transfer is an incident of service and not its condition. An order of transfer is amenable to judicial review only on two counts, namely, (i) if such order of transfer is in contravention of law and (ii) if the order of transfer suffers from the vice of malice or is otherwise actuated by ulterior motive. The Court does not sit over the administrative decision of transfer of an employee unless such administrative decision, as indicated above, suffers from the vice noticed above.

5. That the post of the writ petitioner (present respondent) is transferable is not in dispute. That the writ petitioner, as per the policy of the State Government cannot be posted in his home district is also not in dispute. The policy of the government framed in this regard also suggests that, ordinarily, such employee shall be posted within home Division. But there is no absolute bar or impediment, if such employee is posted outside the home Division. That the writ petitioner's wife being an Assistant teacher in Government Girls Secondary School cannot be transferred outside the home district is also not in dispute. It is true that, as far as possible, as per the government policy where the husband and wife both are in government service, the effort should be made to post them at the same place but the circumstances may justify the spouses being posted at different places.

6. It is true that the writ petitioner was posted at Sarairanjan Block, Samastipur prior to 20th June, 2005 and that by an order dated 20th June, 2005, he has been transferred from Sarairanjan Block, Samastipur (Darbhanga Division) to Madhubani Block, District West Champaran (Tirhut Division). It is also true that the writ petitioner made a representation for posting him at the place where his wife was posted. Since he could not have been posted in Samastipur district as it was his home district, obviously, he had to be posted outside Samastipur district. Posting of the petitioner, therefore, could not have been at the place where his wife was posted. Instead, the State Government decided to post the petitioner at Collectorate, Begusarai. That Begusarai is an adjacent district to Samastipur is not in dispute. Even if we assume that Begusarai falls in a different Division but, in our considered view, the order dated 30th June, 2006, has broadly been passed keeping in view the inconvenience and the hardship being caused to the petitioner because of his posting at Madhubani Block of West Champaran district. By no stretch of imagination, it can be said that the transfer order dated 30th June, 2006 is actuated with ulterior motive or is malafide. It does not breach any law as well.

7. For all these reasons, we are unable to sustain the order of the Single Judge. Consequently, the Letters Patent Appeal is allowed. The impugned order dated

5th December, 2007 is quashed and set aside.

8. Needless to say that if the writ petitioner feels that his transfer to the Collectorate, Begusarai is inconvenient and causing him greater hardship, he is free to make a representation to the competent authority within two weeks from today.

9. We observe that if such a representation is made, the same would be disposed of objectively, un-influenced by the present litigation, expeditiously and preferably within one month from the date of receipt of the representation. If representation has already been made by the writ petitioner, we observe that the appropriate authority shall consider the same in accordance with law and pass an appropriate order objectively, un-influenced by the present litigation, expeditiously and preferably within one month from the date of receipt of this order. The parties shall bear their own costs.