

(2009) 01 PAT CK 0017

In the Patna High Court

Case No : C.W.J.C. No's. 16215, 16217, 15532, 15629, 15828, 15848, 15757, 15763, 15764 and 15929 of 2008

Vidya Sagar Singh and others

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Citation : (2009) 121 FLR 1142

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Sadanand Jha, Jitendra Kumar Singh, Tej Bahadur Singh, Dinesh Singh, Prabhakar Singh, Prabhat Ranjan, Brajesh Kumar, Gyan Shankar and Durgesh Nandan, for the Appellant;

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners and the learned Counsel for the State.

2. Since a common question with regard to validity of the orders of transfer have been raised in this batch of writ applications they are being disposed off by this common order, except CWJC No. 16217 of 2008.

3. The State Government has framed a policy dated 1.3.2007 with regard to transfer and postings. It inter alia provides that orders of transfer should normally be issued in the month of June of the year concerned. In the present cases by order dated 30.6.2008, 79 persons including the Petitioners were transferred. The transfer order took effect inasmuch as the Petitioners joined their respective new places of posting. The Respondents then issued an order dated 1.10.2008 cancelling these orders of transfer and which cancellation came to be notified by an order dated 17.10.2008.

4. Learned Counsel for the Petitioners have raised several issues with regard to the impugned orders dated 1.10.2008 and 17.10.2008 including the merits

thereof in terms of the policy dated 1.3.2007. Reliance has also been placed on two Bench decisions of this Court in Smt. Jyotsna Kumari Vs. State of Bihar and Others, and Mahmood Azam Siddique Vs. The State of Bihar and Others, .

5. Learned Counsel for the State urged that the orders of transfer were contrary to the rules and not in the interest of administration and in violation of the policy dated 1.3.2007 on certain aspects.

6. It is not the case of the State that orders of transfer have been issued by an authority incompetent to do so. The orders therefore do not lack in jurisdiction. It is also not in controversy that the orders of transfer have taken effect inasmuch as the persons had joined their transferred places of posting and have been functioning as such. In the case of Smt. Jyotsna Kumari (supra) relied upon by the Petitioners, an order of transfer had been passed and was acted upon inasmuch as respective parties joined their new places of posting. The earlier order of transfer was then sought to be cancelled. That is precisely what has been done in the present cases also. The Court at Paragraph 12 of the judgment held as follows:-

12. Now it is a settled law that once an order of transfer issued and acted upon, it spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant.

7. Likewise in the case of Mahmood Azam Siddiqui and Ors. (supra) this Court was considering the challenge to certain orders cancelling the transfer and posting, which had already taken effect inasmuch as the persons concerned had joined the new place of assignment. Similar argument was advanced on behalf of the Petitioners that once a notification of posting was issued and acted upon the State had no jurisdiction to cancel the same. It is noteworthy that there also the State took the stand that the mistake in the order of transfer having been detected it was always open to the State to correct the mistake to support the cancellation of order of transfer. In the present case also it is the contention of the State that the order of transfer suffer from mistakes. This Court at Paragraphs 8 and 9 framed the question as follows:

8. So far as power of transfer is concerned, it is not in dispute that the State has jurisdiction to transfer its employee from one place to another place for which specific provisions have been made under Bihar Service Code (See Rules 51 and 56).

9. However, the question arises as to whether a Notification of transfer already issued and acted upon, the same can be cancelled/recalled or rescinded subsequently or not.

And answered it in Paragraph 13 in following terms:

13. In view of aforesaid decision and the fact that the earlier notification dated 17th August, 1999 was acted upon by the Petitioners, whereinafter the same become ineffective, I hold that the State of Bihar had no jurisdiction to rescind/

recall such notification of transfer.

8. The question raised in this batch of writ applications stand squarely angered by the aforesaid two Bench decisions of this Court. In terms thereof all these writ applications are allowed. The orders of cancellation of transfer dated 10.2.2008 and 17.10.2008 are accordingly set aside. The Petitioners stand instated and entitled to continuance at the places of posting in terms of the order dated 30.6.2007 which cannot be interfered with except in accordance with law.

9. In CWJC No. 16217 of 2008 it has been contended on behalf of the respondent-State that the Petitioner undoubtedly joined his new place of posting in terms of the order of transfer dated 30.6.2008. But, nonetheless in pursuance of the subsequent cancellation of the same by the impugned orders dated 1.10.2008 and 17.10.2008 he reverted back to his original place of posting prior to 30.6.2008. In pressing the same he represented to the contrary before this Court when on 1.11.2008 an interim order staying the operation of the impugned orders dated 10.2.2008 and 17.10.2008 came to be passed when in fact the subsequent orders sought to be impugned had already been acted upon.

10. Learned Counsel for the Petitioner rightly urged that the Petitioner did nothing else than as a law abiding Government servant he was required to do. More than one judicial pronouncement has held that the Government servant must join the transferred place of posting and then protest. That is precisely what he (sic) Petitioner did. Be that as it may, once the writ application is being finally disposed off on question of law any interim orders passed in the meantime lose their (sic) relevance.

11. In view of the position of law discussed above, this Court finds it difficult to hold that the Petitioner misrepresented of a magnitude and manner to derive any extreme advantage to which he was not entitled in law so as to unseat his writ application on that ground alone.

12. This Court finds no reason to arrive at any different conclusion with regard to the Petitioner in CWJC No. 16217 of 2008 than that arrived in the aforesaid writ applications. CWJC No. 16217 of 2008 stands allowed in similar terms.