

(2021) 03 PAT CK 0205

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 727 Of 2021

Vivekanand Swami

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 22-03-2021

Acts Referred:

Citation : (2021) 03 PAT CK 0205

Hon'ble Judges : Anjani Kumar Sharan, J

Bench : Single Bench

Advocate : Sanjay Kumar Singh, Lalit Kishore

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. On 03.02.2021, this Court has stayed the order dated 02.09.2020 (Annexure-8 of the writ petition) passed by Principal Chief Conservator of Forest. For vacating the aforesaid stay order, respondents have filed an interlocutory application, bearing I.A. No.1 of 2021 and also filed counter affidavit. I deem it proper not to pass separate order on I.A., as with consent of all the parties appearing in this case, this writ petition has been heard finally for disposal at this stage itself.

3. The present writ petition has been filed for the following reliefs :-

(i) For issuance of an order, direction or writ in the nature of certiorari quashing that part of Memo No.1857 dated 02.09.2020 by which the petitioner has been transferred from the post of Forest Range Officer, Rajauli (Nawada) to Gopalganj in the same capacity.

(ii) For issuance of an order direction or writ in the nature of mandamus, directing the respondent authorities to post the petitioner in anywhere in the State of Bihar except a place where one Sunil Kumar C.F. Siwan is posted and the petitioner will have to work under him.

(iii) Any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.

4. The fact giving rise to the present writ petition in narrow compass, is that the petitioner was working as a Forest Range Officer under the Conservator of Forest (in short C.F.), Siwan Circle. The petitioner was posted under him and both of them were under Administrative Control of the Conservator of Forest, Siwan Circle wherein torture of the petitioner was started at the behest of the Conservator of Forest, Siwan Circle and the petitioner was not ready to succumb to the illegal pressure created by the Conservator of Forest, Siwan.

5. Vide letter no.1619 dated 26.11.2018, the C.F., Siwan issued a letter to the said Virendra Kumar Daradh and one Rafi Ahmad, Forest Guard, Raksaul directing them to constitute an enquiry committee to look into the work of afforestation in the area Loria to Jakhara for the year, 2018-19 at complain had been received. This was done to pressurize the petitioner to succumb to the petitioner and commit frauds and legalities. On 27.11.2018, the petitioner while discharging the duty as Forest Range Officer, Areraj made a representation/application before the Principal Chief Conservator of Forest, Bihar making specific allegation against him, the C.F., Siwan (the said Sunil Kumar) and certain other persons stating therein that the said C.F., Siwan with the help of the persons named therein in the application were trying to falsely implicate him in any case (Annexure-2 to the writ petition). On 03.12.2018, the petitioner moved the Court of Chief Judicial Magistrate, Patna (his residence) against the C.F., Siwan, and others intimating the learned court that there was a serious threat to his job and his life in the hands of the opposite parties as mentioned in the said petition (Annexure-3). On 13.12.2018, the petitioner again wrote to the respondent no.2 requesting him to provide protection and security for both his job as well as life (Annexure-4). Vide Memo No.131 dated 21.12.2018, the petitioner was transferred from Areraj (East Champaran) to Rajauli (Nawada) under the orders of respondent no.2 and was directed to join the transferred post on or before 01.01.2019.

6. On 24.12.2018, the petitioner represented before the Principal Secretary of the Department requesting him that all the official works undertaken by him at his present place of posting (Areraj Range) be done transfer to his new place of posting at Nawada else the petitioner would be falsely implicated for not completing works by his superior authorities (Annexure-5).

7. Pursuant to the transfer of the petitioner from Areraj to Rajauli Forest Division, Nawada, he joined as the Forest Range Officer, Rajauli in Nawada Forest Division on 03.01.2019 and started discharging his duties. Petitioner was entrusted with the task of enquiring into the conduct of one Birendra Kumar Pathak, Van Pal and one Rishi Kumar, Van Pakshi with regard to their connivance with the forest mafia for purposes of deforestation. The petitioner was under immense pressure to submit a report in favour of the employees against whom enquiry was entrusted to him.

8. Vide letter no.368 dated 01.09.2020, the petitioner submitted his report giving a finding that the said Rishi Kumar was innocent and the Birendra Kumar Pathak was guilty of the charges so levelled against him. Vide Memo No.1587 dated 02.09.2020 (Annexure-8), the order impugned was issued by which the petitioner has been transferred from the Rajauli Forest Range, Nawada to Gopalganj Forest Range (Annexure-8 to the writ petition).

9. The person at serial no.1 in the said impugned order (Annexure-8) is working in the Nawada Forest Division since last about 5 years and he had been transferred from Nawada Forest Range to Rajauli Forest Range in same Division. The petitioner is not opposing his transfer order else he may be misunderstood as opposing his transfer by filing the present writ petition. But the sequence of the events as narrated above clearly indicate that he is being penalized for doing his job righteously which sadness as the petitioner is made to realize that he will be penalized for being upright. On account of medical urgency, the petitioner is on leave now and during this period, on 06.10.2020, the petitioner has made a representation before the respondent no.2 to the said effect (Annexure-9 to the writ petition).

10. After hearing the petitioner, on 03.02.2021, this Court has granted ex-parte stay to the petitioner regarding this fact that the petitioner was mentioned in prayer to "issuance of an order, direction or writ in the nature of mandamus, directing the respondent authorities to post the petitioner in anywhere in the State of Bihar except a place where one Sunil Kumar C.F., Siwan is posted and the petitioner will have to work under him."

11. Later on, respondents have filed I.A. No.01 of 2021 for vacating ex-parte stay and counter affidavit filed by them is also on record. In the counter affidavit, respondents have mentioned that the grounds on the basis of which the said prayer has been made in paragraph-2 of this writ application, the petitioner has claimed that there exists difference and animosity in between the petitioner and Sunil Kumar, Conservator of Forests, Siwan, Circle. In this regard, the respondents mentioned in paragraph-7 of the counter affidavit that Sunil Kumar, Conservator of Forest has superannuated from the service on 31st December, 2020. Now Sudhir Kumar Karn has been posted as Conservator of Forest, Siwan Circle. In paragraph-10 of the counter affidavit, the respondents stated that vide letter no.2336 dated 17.09.2020 (Annexure-R/4), the Divisional Forest Officer, Nawada Forest Division has informed that the petitioner has been relieved on 18.09.2020 to give his joining at Gopalganj Range. On account of administrative reason, the Divisional Forest Officer, Nawada Forest Division vide his letter no.1972 dated 17.08.2020 and Conservator of Forests, Gaya Circle vide his letter no.1394 dated 22.08.2020 recommended for his transfer to another place. The Regional Chief Conservator of Forest, Patna vide his letter no.1001 dated 25.08.2020 also recommended for the transfer of petitioner to some other place and for posting of a suitable officer in the range (Annexures R/1, R/2 and R/3 of the counter affidavit). The recommendation made for transfer of the petitioner

were considered and vide order no.145 dated 02.09.2020, petitioner has been transferred and posted to Gopalganj Forest Range and Akhileshwar Prasad has been given additional charge of Rajauli Forest Range. A copy of the said order has been annexed as Annexure-8 to the writ petition.

12. The petitioner filed a rejoinder affidavit stating therein that in view of Annexures R/1, R/2 and R/3 filed on behalf of respondent nos.2 and 3, he is pressing only the first relief sought for in the present writ petition. Learned counsel for the petitioner submits that the authorities acting on the request of the person who initiated the proposal for the transfer of the petitioner and who is the deponent of the counter affidavit and interlocutory application filed on behalf of respondent nos.2 and 3, i.e., the D.F.O., Nawada is himself a man of doubtful integrity. Learned counsel for the petitioner further submits that the documents, as annexed as Annexures R/1, R/2 and R/3 to the counter affidavit filed on behalf of respondent nos.2 and 3, very categorically depicts that the so-called transfer of the petitioner on administrative ground is concerned, the same is a misnomer. He further submits that the order of transfer is punitive in nature passed on behest of another person.

13. The petitioner has relied upon the judgment passed in C.W.J.C.12656 of 2006; Vinod Kumar Singh vs. The State of Bihar & Ors. The relevant paragraphs 6 and 7 of the said judgment are quoted herein below :

"6. It is well settled in law that an order by the statutory authority without application of mind, but, at the dictates of another, amounts to complete abdication of jurisdiction by the statutory authority. The order, therefore, becomes arbitrary and ultra vires.

7. The Apex Court elucidating the legal position has held at paragraph 26 in (2004)2 SCC 65 (Bahadursinh Lakhubhai Gohil vs. Jagdishbhai M. Kamalia & Ors) that : "26. It is also well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires."

14. Learned counsel for the respondents submits that the petitioner has prayed for his posting at any place except at a place where Sunil Kumar, Conservator of Forest is posted. Since Sunil Kumar has superannuated from service on 31.12.2020, hence this writ application is fit to be dismissed. He further submits that on 03.02.2021, the Hon'ble Court has granted stay on the impugned order up to 03.03.2021. The petitioner has concealed the fact from the Hon'ble Court that he has been relieved on 18.09.2020 from his posting at Rajauli Range. Therefore, the order of stay passed on 03.02.2021 by this Court may be withdrawn and no further order of stay may be passed during pendency of this writ petition. He further submits that Akhileshwar Prasad has already assumed charge of Range Officer of Forest, Rajauli Range, Nawada. The petitioner has raised allegations against Sunil Kumar, Conservator of Forest, Virendra Kumar Daradh and other persons but has not made them party to this writ application.

Sunil Kumar and Virendra Kumar Daradh both have superannuated from the service and therefore, claim of the petitioner that he should not be posted under them are not sustainable in his case. Lastly, learned counsel for the respondents submits that the petitioner was not found performing his duties properly and he has been transferred from Rajauli on administrative grounds only. Hence, the question of imposing any penalty do not arise.

15. After hearing the parties and on perusal of the record, it appears that the petitioner has not mentioned this fact that Sunil Kumar had retired in December itself and he relieved from Rajauli on 18.09.2020 (Annexure-R/4 of the counter affidavit). Therefore, this Court has been pleased to grant stay in favour of the petitioner. Now the petitioner has relied upon the judgment passed in the case of Vinod Kumar Singh (supra), which is not applicable to the facts and circumstances of the present case and is distinguishable on the fact. In paragraphs 2 and 3 of the judgment, the Hon'ble Court has held as follows :

"2. The petitioner is a Statistical Supervisor. He was posted in the office of the District Education Officer at Biharsharif in the district of Nalanda. On 09.03.2006 at Annexure-1, a communication was issued by the Deputy Collector Incharge of the Public Grievances Cell addressed to the District Superintendent of Education, Nalanda, that complaints have been received against the petitioner. He should, therefore, be transferred out of the District Headquarters with a compliance report to be submitted. Annexure-2, dated 16.03.2006 then came to be issued by the District Superintendent of Education, Nalanda stating that on direction of the Deputy Collector Incharge dated 09.03.2006, the petitioner was deputed to the office of the Sub-Divisional Education Officer, Hilsa. Thereafter, an order dated 14.07.2006 at Annexure-3 came to be issued from the office of the District Magistrate, Nalanda at Biharsharif by which the services of the petitioner were transferred to the office of the Regional Deputy Director, Patna Division, Patna.

3. Learned counsel for the petitioner submits that the petitioner is an employee of the Education Department. His controlling authority is the District Education Officer. The impugned orders at Annexures 1, 2 & 3 are illegal on the face of it as being without jurisdiction. It is apparent from the recitals in Annexure-2 that it has not been passed by his Controlling Officer of his own volition by independent application of mind to his satisfaction, but that it has been passed at the dictates of the Deputy Collector. The controlling authority has, therefore, abdicated his statutory powers and acted on the direction of and behest of an external authority which vitiates the order. For like reason Annexure-3 is completely without jurisdiction inasmuch as the District Magistrate has no power to transfer the petitioner."

16. But in the present case, the petitioner has transferred by the competent authority, it is apparent from the recitals in Annexure-8 that it has been passed by his controlling officer, on the administrative ground and only recommendation has been made by the concerned authority of the department (Annexures R/1, R/2 and R/3 of the counter affidavit) that the petitioner has failed to perform his

duty, therefore, Annexure-8 has been issued regarding the transfer of the petitioner.

17. This Court is of the opinion that it is the prerogative of the employer to post a particular person at a particular place. This has been approved long back by the Apex Court in the case of Vishwanath Sharma vs. The State of Bihar & Ors reported in 2014(1) PLJR 232. Particularly paragraph-8 of the said judgment would be necessary to be quoted herein below :

"8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. First of all, order of transfer passed on 30.06.2011, was already given effect during the pendency of the earlier writ petition i.e. C.W.J.C. No.18884 of 2011. It is true that while disposing of the said writ petition, liberty was granted to the petitioner to file representation with a direction to pass order in accordance with law. Particularly, in view of Government policy, thereafter representation of the petitioner was considered and it was rejected and communicated vide Annexure-'1' to the writ petition. So far as transfer of an employee/officer is concerned, time without number it has been held that transfer is the incident of service. The Court is of the opinion that it is the prerogative of the employer to post a particular person at a particular place. This has been approved long back by the Hon'ble Apex Court in a case reported in 1991(1) PLJR (SC)61 [Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors.]. Particularly, paragraph-4 of the judgment would be necessary to be quoted which is quoted herein below :-

"4. In our opinion, the courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court overlooked those aspects in interfering with the transfer orders."

18. In the context of transfer of a Government servant, I refer to the decision of Apex Court in N.K. Singh vs. Union of India reported in [AIR 1995 SC 423] where this Court observed in para 22 as follows :

"22..... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several

imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all Government Departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

19. In the case of Dr. Baleshwar Pd. Chaurasiya & Ors vs. The State of Bihar & Ors reported in 2008(1) PLJR 440, in paragraphs 5 and 6 of the said judgment, the Hon'ble Court has been pleased to held as follows :

"5. An order of transfer is an administrative matter not to be interfered with by a Court unless there be any statutory violation or if the transfer be mala fide. Issuance of any instructions by the Government with regard to the transfer and posting only create a right in a Government servant to file a representation. The petitioners have availed the same. Their representations are stated to be pending.

6. The Supreme Court in the case of State of U.P. & Ors. Vs. Gobardhan Lal (AIR 2004 Supreme Court 2165) has held at paragraph 8 as follows :

"8.....Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not= confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

20. In the case of Indu Kumari vs. The State of Bihar & Ors reported in 2010(2) PLJR 433, in the said judgment, paragraphs 5 and 7 are quoted herein below :

"5. Transfer is a normal incidence of service and the Courts refrain from interference unless there be manifest arbitrariness, violation of statutory rules and procedure or palpable mala fide in the transfer. If an order of transfer has been passed for an administrative reason and when it is challenged the administrator discloses the reason, all that the Court is required to see is whether the reasons are germane to the issue or not. A germane issue can also be an environment conducive to administrative efficiency. The enforcement of administrative discipline by transfer may not necessarily require initiation of proceedings followed by a punitive transfer.

7. In (2004)4 SCC 245 (Union of India & Others vs. Janardhan Debanath and Another) considering a challenge to an order of transfer alleged to be punitive in nature when no disciplinary proceedings were held but transfer was made only for reason of administrative discipline combined with exigency of administration, the Supreme Court declined to interfere with the order of transfer observing as follows at para 14 :-

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned Counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigency of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

21. In (1989)2 SCC 602, Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani, Apex Court has held that a public servant must comply with an order of transfer and if he had any genuine difficulty in proceeding on transfer it is open to the employee to make a representation to the competent authority for its stay, modification or cancellation of the present order. If the order of transfer is not stayed, modifying or cancelled then the employee has to carry out the order. The Apex Court further held that an employee cannot avoid or evade the transfer merely on ground of having made a representation.

22. It is important to mention here, the State Government, being the employer, is the pay master and, therefore, the employee cannot question the term of transfer and posting. If that is permitted to question then functioning of the State would become very difficult. This observations could not be taken to mean that I am supporting the arbitrary action in the present case. I do not find any arbitrary action on the part of the authority.

23. In the facts and circumstances of the case and the discussion made in the foregoing paragraphs, in my view, petitioner was not found performing his duties properly and he has been transferred from Rajauli on administrative ground only, the question of imposing any penalty do not arise.

24. Accordingly, the writ petition is dismissed. The order of stay granted vide order dated 03.02.2021 is vacated. I.A. No.1 of 2021 also stands disposed of.