

Dharmendra Kumar Vs. The State of Jharkhand Thr Its Chief Secretary

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Court : Jharkhand

Decided On : Dec-23-2014

Appellant : Dharmendra Kumar

Respondent : The State of Jharkhand Thr Its Chief Secretary

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.5677 of 2014
Dharmendra Kumar S/o Lalan Kumar R/o Chandra Residency, Chesire Home Road, Bariayatu, Ranchi Petitioner Versus 1. The State of Jharkhand through Chief Secretary 2. The Principal Secretary, Rural Works Department, Ranchi 3. The Deputy Secretary, Rural Works Department, Ranchi 4. The Superintending Engineer, Rural Works Circle, Dumka, Rural Works Department, Dumka 5. The Executive Engineer, Rural Works Division, Deoghar, Rural Works Department, Deoghar 6. Verma Dayal Ram @ Vishnu Dyal Ram Respondents -----
CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. Krishna Murari, Advocate For the State : M/s A. Allam, Sr. S.C.II , Priya Shreshtha, J.C to Sr.SCII For the Respt.No.6 : Mr. A.K.Sahani 05/23.12.2014
Heard counsel for the parties. Petitioner has approached this Court being aggrieved by the impugned notification dated 24.10.2014 (Annexure-9) issued by the Rural Works Department, Government of Jharkhand whereby the order of his earlier transfer bearing notification no. 3373 dated 13.10.2014 was cancelled. By the said notification dated 13.10.2014 petitioner was transferred from his erstwhile place of posting as Estimating Officer, Rural Works Division, Jamtara to the post of

Assistant Engineer, Rural Works Sub Division, Deoghar. By the same impugned notification(Annexure-9) the earlier order of transfer of respondent no.6 through notification dated 3300 dated 30.9.2014 from his previous place of posting as Assistant Engineer, Rural Works Sub Division, Deoghar to the same post of Estimating Officer, Rural Works Division, Jamtara was cancelled. Petitioner claims to have assumed charge on the transferred post at Deoghar which was accepted by the Executive Engineer, Rural Works Division, Deoghar as per Annexure-7 dated 17.10.2014. Learned counsel for the petitioner submits that the since order of transfer have been acted upon, therefore, such cancellation of the transfer order is in teeth of the judgment rendered by this Court in the -2- case of Raghubansh Singh Vrs. State of Bihar & others reported in 2002(1) JLJR89 and in the case of Ram Prasad Mahto & ors Vrs. The State of Jharkhand & others reported in 2003(1)JLJR427 He has also referred to the judgment rendered by the Patna High Court in the case of Mahmood Azam Siddique Vrs. State of Bihar reported in 2000(3) PLJR139 Learned counsel for the respondent- State submitted that the earlier orders with regard to the petitioner was an individual order of transfer. The department upon re-consideration has cancelled the same. It is further submitted that the respondent no.6 has in the meantime been promoted as an Executive Engineer and it is likely that within a short time, he would be posted on the promoted post at any other place. However, it is also submitted that once the order of transfer has been revoked and the petitioner was also relieved by the office of Executive Engineer, Deoghar through order dated 26.11.2014 to join at Jamtara, no interference may be made in the impugned order. Learned counsel for the respondent no. 6 submitted that the petitioner had unilaterally joined at the transferred place though the said respondent had not been relieved. It is further submitted that the respondent no.6 having been promoted during the pendency of the writ petition, petitioner may not have any grievance against the said respondent as he is likely to be posted at any other place on his promotion by the respondent- department in the near future . It is further submitted that since the order of transfer has been revoked, the impugned order need not be interfered with. I have heard counsel for the parties and gone through the relevant materials on record. It appears that the State Government through earlier orders dated 30.9.2014 and 13.10.2014 issued the -3- orders of transfer of the respondent no.6

and the petitioner to each others' place. It further appears from perusal of Annexure-C , letter dated 1.11.2014 of the Executive Engineer, Rural Works Division, Deoghar and the letter dated 20.11.2014 (Annexure-C/1) of the respondent- Rural Works Department addressed to the Executive Engineer , Annexure-C/2 , the Office order of the Executive Engineer, Deoghar dated 21.11.2014 as also Annexure-C/3 of the same date that the order of transfer of the petitioner dated 13.10.2014 had already been acted upon. By the Office order dated 26.11.2014, in fact he has once again been relieved from the post of Assistant Engineer, Rural Works Sub Division, Deoghar to join at his earlier place of posting as Estimating Officer, Rural Works Division, Jamtara. These sequence of facts therefore indicate that order of transfer of the petitioner were acted upon, though respondent no.6 who was already on transfer through earlier order dated 30.9.2014 may not have joined at his transferred place of posting. It further appears from Annexure-6, Office order dated 17.10.2014 of the Executive Engineer, Deoghar that the respondent no. 6 had been relieved to join at Jamtara and the petitioner's unilateral joining has been accepted vide Annexure-7 of the same date. Such a state of affair therefore do lead to a conclusion that the order of transfer dated 13.10.2014 had been acted upon in respect of the petitioner. More over the respondent no. 6 had also earlier been relieved and again allowed to join the same place by the Executive Engineer, Deoghar pursuant to the impugned order cancelling his earlier order of transfer. Therefore, the impugned order is in teeth of the principle laid in the judgment rendered by this Court in the case of Raghubansh Singh Vrs. State of Bihar & others (supra) and in the case of Ram Prasad Mahto & ors Vrs. The State of Jharkhand & others (supra) and the judgment rendered by the Patna High Court in the case of Mahmood Azam Siddique Vrs. -4- State of Bihar (supra). The impugned order dated 24.10.2014(Annexure-9) therefore is quashed. It is indicated by learned counsel for the respondent- State and the Private respondent that the respondent no.6 has since been promoted to the post of Executive Engineer. Needless to say, it would be open for the department to take a decision in respect of the posting of the respondent no.6 in accordance with law within a reasonable time. The writ petition is allowed. All the pending I.A.s are disposed of. (Aparesh Kumar Singh, J.) A. Mohanty

