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Court : Jharkhand

Decided On : Mar-21-2006

Reported in : [2006(2)JCR332(Jhr)]

Judge : S.J. Mukhopadhaya, J.

Appeal No. : Writ Petition (S) No. 482 of 2006

Appellant : Ram Chandra Ram

Respondent : The State of Jharkhand and ors.

Advocate for Def. : M.K. Laik, Sr. S.C.I. and; R. Krishna, Adv. for respondent no. 7

Advocate for Pet/Ap. : Rajiv Ranjan, Adv.

Disposition : Petition allowed

Judgement :

S.J. Mukhopadhaya, J.

1. This writ petition has been preferred by petitioner against the notification No. 7260 dated 31st December, 2005 issued by the State of Jharkhand, whereby and where under, 7th respondent, Vijay Kumar has been posted as Assistant Engineer, Rural Engineering Organisation (REO for short), Works Subdivision,

Deoghar.

2. According to the petitioner, the notification No. 7260 dated 31st December, 2005 so far it relates to 7th respondent, is bad in law, he having been posted against a post which is not vacant, as the petitioner has already joined and functioning against the said post of Assistant Engineer, REO, Works Subdivision, Deoghar.

3. It appears that the petitioner, Ram Chandra Ram; 7th respondent, Vijay Kumar and others were transferred on 30th December, 2003. The 7th respondent, who was posted as Assistant Engineer, REO, Works Subdivision, Madhupur (Deoghar), was transferred vide Notification No. 9622 dated 30th December, 2003 and posted as Assistant Engineer, REO, Works Subdivision No. II, Godda in place of one Sri Puneshwar Rajak, Petitioner, Ram Chandra Ram, who was functioning as Estimating Officer, REO, Works Circle, Dumka, was transferred vide Notification No. 9624 dated 30th December, 2003 and posted as Assistant Engineer, REO, Works Subdivision, Deoghar in place of one Sri Paras Kumar.

4. According to the petitioner, the Superintending Engineer under whom he was posted as Estimating Officer at Dumka, did not relieve him in spite of notification of transfer. Subsequently, he was relieved and joined the post of Assistant Engineer, REO, Works Subdivision, Deoghar on 26th December, 2005.

5. Learned Counsel for 7th respondent submitted that one Sri Paras Kumar continued to function as Assistant Engineer, REO, Works Subdivision, Deoghar in spite of his transfer. After posting of 7th respondent as was made vide Notification No. 7260 dated 31st December, 2005 by backdating the joining letter, it was shown that the petitioner, Ram Chandra Ram had joined the post on 26th December, 2005. It was submitted that the Notification No. 9264 dated 30th December, 2003 by which the petitioner was transferred and posted as Assistant Engineer, REO, Works Subdivision, Deoghar, was not acted upon till the Notification No. 7260 datgzgzed 31st December, 2005 was issued.

6. The respondents-State authorities have appeared and supported the stand taken by the petitioner that he was not relieved by the Superintending Engineer,

REO, Works Circle, Dumka to join the transferred post at Deoghar in pursuance of Notification No. 9624 dated 30th December, 2003. The Superintending Engineer, REO, Works circle, Dumka, for the first time, asked Sri Paras Kumar, Assistant Engineer by his Memo No. 721 dated 24th December, 2005 to give charge to the petitioner. Thereafter, the petitioner took charge of the post of Assistant Engineer, REO, Works Subdivision, Deoghar on 26th December, 2005 and informed it to the Executive Engineer, REO, Works Subdivision, Deoghar. Having taken charge, he was relieved from Dumka by order No. 79 dated 28th 3anuary, 2006.

7. To find out whether the post of Assistant Engineer, REO, Works Subdivision, Deoghar was treated to be a vacant post on account of non-joining of petitioner and on such presumption whether 7th respondent, Vijay Kumar was posted at Deoghar or not, the Court directed the respondents to produce the relevant file relating to transfer. From the file No. -6-Estt.-224/05 of Rural Development Department, the following facts emerge:

For the first time, the Minister In charge of the Department called for Establishment Committee's Meeting on 27th December, 2005 to take up the regular transfer and posting of Government employees. The ministerial staff by their note shown a list of 13 persons as waiting for posting, which does not include the name of petitioner or 7th respondent. Five more persons were shown to be posted as In charge Assistant Engineer since December, 2005. The said list also does not include the name of petitioner or 7th respondent. Another list of ten persons was drawn, who had completed their tenure of posting (three years) and were to be transferred to some other place. This list also does not include either the name of the petitioner or 7th respondent.

A list of 24 vacant posts was also drawn, which includes the post of Estimating Officer, REO, Works Circle, Dumka i.e. the post where the petitioner was functioning till 24th December, 2005. This list was prepared on 28th December, 2005. From the aforesaid facts, it is clear that the department had knowledge as on 28th December, 2005 that the petitioner has already vacated the post of Estimating Officer, REO, Works Circle, Dumka and had joined the transferred post at Deoghar. In the said list of 24 vacant posts, the post of Assistant Engineer,

REO, Works Subdivision, Deoghar was not shown vacant, that means the authorities treated the said post to have been filled up by joining of the petitioner. Though the name of petitioner or 7th respondent was not there in the list of transfer, only when the matter was placed before the Minister In charge of the Department, he by his note dated 30th December, 2005, asked to post the 7th respondent as Assistant Engineer, REO, Works subdivision, Deoghar. In the said note, neither it was shown that the post was vacant nor the Minister In Charge noticed that the petitioner had already joined the post of Assistant Engineer, REO, Works Subdivision, Deoghar.

8. From the aforesaid fact, it is clear that the posting of 7th respondent has been made at Deoghar though no such post was vacant. The fact aforesaid also make it clear that the petitioner, in fact, joined the post at Deoghar on 26th December, 2005 and no document was antedated or interpolated to the disadvantage of 7th respondent.

It is a settled law that no person can be transferred to a post, which is not vacant. In this background, as by the Notification No. 7260 dated 31st December, 2005, the 7th respondent had been posted against non-existent vacancy, it cannot be upheld. The said Notification dated 31st December, 2005, so far it relates to 7th respondent, is, accordingly, set aside. The case is remitted with a direction to the respondents to post 7th respondent to some other vacant post after obtaining the recommendation of the Establishment Committee and preferably within two weeks from the date of receipt/production of a copy of this order.

9. This writ petition is allowed, with the aforesaid observations. However, in the facts and circumstances, there shall be no order as to costs.

Let the original record be handed over to learned Sr. S.C.I.

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