

Binod Kumar Vs. the State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Feb-27-2007

Reported in : 2007(2)BLJR1309; [2007(2)JCR271(Jhr)]

Judge : Narendra Nath Tiwari, J.

Acts : [Constitution of India](#) - Articles 14 and 21

Appeal No. : W.P.(S) No. 42 of 2007

Appellant : Binod Kumar

Respondent : The State of Jharkhand and ors.

Advocate for Def. : H.K. Mehta, G.A. and; Manoj Tondon, Adv. for Respondent No. 4

Advocate for Pet/Ap. : A.K. Sinha, Sr. Adv. and; I. Sinha, Adv.

Disposition : Petition allowed

Judgement :

Narendra Nath Tiwari, J.

1. In this writ petition, the petitioner has prayed for quashing Notification No. 3885 (Bha) dated 30th December, 2006, as contained in Annexure-4, whereby the petitioner, who is an Assistant Engineer, has been transferred from Medical

Building Sub-division No. 1, Bariatu, Ranchi to Building Sub-division, Chas (Bokaro) within a period of six months from the date of his earlier transfer and that too without any recommendation of the Establishment Committee. The petitioner has also prayed for quashing the consequent transfer of Respondent No. 4, who has been transferred and posted in place of the petitioner without any recommendation of the Establishment Committee.

2. According to the petitioner, he has been subjected to unnecessary frequent transfer, as about six months ago, he was transferred and posted at Ranchi and from Ranchi, he is being now transferred to Bokaro within a period of six months. The petitioner has assailed the transfer order on the ground that the same is contrary to the policy decision of the Government governing transfer and posting of the government employees.

3. Mr. A.K. Sinha, learned senior counsel appearing for the petitioner, submitted that the Government has framed rules/policy for the transfer and posting of the government employees and according to the said policy decision, the procedure has been prescribed for general transfer and posting of the employees. The general policy relating to transfer and posting is that the transfer should be normally made twice i.e. in the month of May-June and November-December of each year, provided that there may be deviation from the same in special circumstances e.g. illness, vacancy or in case of administrative exigency. It has been contended that the government employees cannot be transferred arbitrarily and at the whim of interested persons and the procedure prescribed must be followed, which includes recommendation of the Establishment Committee and approval of the departmental minister, but the prescribed procedure has not been followed in transferring the petitioner as well as Respondent No. 4 and no reason has been assigned for giving a go-bye to the said policy decision.

4. Learned Counsel referred to the decision of Patna High Court in the case of Shyam Kumar Prasad v. The State of Bihar and Ors. reported in 1995(1) PLJR 69, in which it has been held that the order of transfer made without placing the matter before the Establishment Committee and following prescribed procedure is liable to be quashed. Similar view was also taken by the said High Court in the case of

Sunil Kumar Pandey v. MThe State of Bihar and Ors. and its analogous cases, reported in 2001 (3) PLJR-711 and also by this Court in L.P.A. No. 154 of 2002 (Shyam Das Singh v. The State of Jharkhand and Ors.) vide order dated 11th April, 2002. It has been contended that when there is a policy decision, the same is to be followed and deviation from the prescribed procedure is arbitrary and not sustainable in law. Learned Counsel further submitted that no exigency/reason has been shown for disturbing the petitioner within a period of six months and justifying the impugned transfer order(s).

5. A counter affidavit has been filed on behalf of the State-respondents. The State-respondents supported the impugned transfer orders on the ground that the same have been made for administrative reason. However, no such reason has been disclosed even in the counter affidavit. It has been admitted that there was no recommendation of the Establishment Committee for transferring the petitioner and Respondent No. 4. It has been also stated that the transferred persons have already joined their respective places of posting and as such, the impugned orders of transfer have been made effective.

6. A counter affidavit has also been filed on behalf of Respondent No. 4. It has been stated, inter alia, that the orders of transfer of the petitioner as well as Respondent No. 4 have been given effect to and that the writ petition is not maintainable on that ground alone. It has been further stated that the impugned orders have been made on administrative ground and that there is no arbitrariness and illegality in the said orders.

7. Mr. Manoj Tondon, learned Counsel appearing on behalf of respondent No. 4, while supporting his contention made in the counter affidavit, submitted that absence of recommendation by the Establishment Committee does not render the order vitiated and on that ground alone the order can be held to be invalid. Learned Counsel referred to and relied on the decision of the Patna High Court in the case of Man Singh v. The State of Bihar and Ors. reported in 1982 BBCJ 392, Learned Counsel also referred to the decision of the Supreme Court in the case of State of U.P. and Ors. v. Gobardhan Lal reported In : (2004)IIILLJ749SC , and a decision of this Court in Khagendra Kumar v. State of Jharkhand and Ors.

reported in 2005(4) JCR 211(Jhr). It has been held in the said decision that this Court in its writ jurisdiction should not normally interfere with the transfer order unless there is an allegation of mala fide and if no useful purpose is served by quashing the said order of transfer.

8. After hearing learned Counsel for the parties and considering their submissions as also materials appearing on record, I find that in the instant case, it is an admitted position that the petitioner has been transferred within a period of about six months from his earlier place of posting and that in the matter of the petitioner and Respondent No. 4, who has been transferred in place of the petitioner, the Establishment Committee has not been consulted, nor any exceptional circumstance has been brought on record justifying the deviation from the prescribed procedure in the matter of the petitioner's transfer.

9. It is true that the transfer is an incident/condition of service and the employer has power to transfer the employees, but when the employer himself has framed a policy decision for the same, some justification must be there on record for not following the same in a particular case. In the policy decision itself, the transfer has to be made by the competent authority after following the prescribed procedure, which requires the recommendation of the Establishment Committee, and approval of the Minister In-charge. Admittedly, in the instant case, the said established procedure has not been followed and no exceptional circumstance has been brought on record to justify the deviation.

10. In the case of Man Singh v. State of Bihar and Ors. (Supra), the Division Bench of the Patna High Court has ruled that though the guidelines framed by the State is directory in nature yet the same shall be substantially followed. Though, it has been held that the transfer even without recommendation of the Establishment Committee cannot be said to be invalid in the circumstances of the said case.

In the case of State of U.P. and Ors. v. Gobardhan Lal (Supra), the Supreme Court has held that the transfer of employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service and unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not

competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Learned Counsel laid much emphasis on the observation that the order of transfer made even in transgression of administrative guidelines cannot be interfered with, unless, as noticed in the said paragraph, the same is otherwise vitiated.

11. The decisions referred to and relied upon by the respondents cannot be interpreted to have shut the door of justice for the employee/person complaining discrimination and arbitrariness or conferring unbridled and unguided power to the employer to adopt pick and choose method to follow the policy decision in some cases or deviate from the same according to their whims without any justification. The State-respondents being the organ of the welfare state has to justify their action in order to meet the test of reasonableness, bona fide and fairness, as required under Articles 14 and 21 of the Constitution.

12. In the case of Khagendra Kumar v. State of Jharkhand and Ors. (Supra), this Court had not interfered with the order of transfer, as the allegation of mala fide was not established and that was a case of chain transfer. There was no objection of absence of recommendation by the Establishment Committee as well. However, in that case also, this Court held that frequent transfer causes inconvenience to the employee concerned and the same is not a healthy practice. More so, the petitioner of that case was ready and willing to go at any other place or post and in that view the impugned order of transfer was not interfered with.

13. None of the decisions referred to and relied on by the respondents are relevant for and applicable to the facts and circumstances of the instant case.

14. In the instant case, the petitioner has been transferred within a short period of six months and that too without any recommendation of the Establishment Committee. No reason has been disclosed by the respondents to justify the deviation from the relevant policy decision. The impugned order issued without any just reason or without following the prescribed provision is apparently whimsical and arbitrary and the same cannot be allowed to sustain.

15. For the aforesaid reasons, the impugned orders of transfer of the petitioner as well as the order of transfer of Respondent No. 4 are held to be unsustainable and are, hereby, quashed. This writ petition is allowed.

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