

Deepak Kumar Vs. the State of Jharkhand and ors.

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Court : Jharkhand

Decided On : May-04-2007

Reported in : 2007(2)BLJR2193; [2007(3)JCR218(Jhr)]

Judge : M.Y. Eqbal and; R.R. Prasad, JJ.

Appeal No. : L.P.A. No. 42 of 2007

Appellant : Deepak Kumar

Respondent : The State of Jharkhand and ors.

Advocate for Def. : Shamim Akhtar (S.C. II),; Ajit Kumar,; V.K. Gupta an

Advocate for Pet/Ap. : P.K. Prasad,; Ritu Kumar,; Ravi Kr. Singh and;

Disposition : Appeal allowed

Judgement :

M.Y. Eqbal, J.

1. Heard Mr. P.K. Prasad, learned Counsel appearing for the appellant, Mr. Ajit Kumar, learned Counsel appearing for respondent N.6- Om Prakash Singh, and Mr. Shamim Akhtar, learned Counsel appearing for the State.

2. This appeal is directed against the judgment dated 7.2.2007 passed by learned Single Judge in W.P. (S) No. 22 of 2007 whereby the writ petition has been

dismissed.

3. The petitioner-appellant filed the aforementioned writ petition challenging the notification No. 3948 dated 30th December, 2006 whereby he has been transferred from the post of Assistant Engineer, MESO Area, Ranchi to the post of Assistant Engineer, MESO Area, Latehar. The petitioner also challenged the notification dated 30th December, 2006 whereby respondent No. 6 has been transferred as an Assistant Engineer, MESO Area, Ranchi.

4. The grievance of the appellant in the writ petition was that he was transferred at the instance of the Minister, Human Resources Development Department, Govt. of Jharkhand who has got no concern with the petitioner's department and further that order of transfer was not legally issued in accordance with law.

5. In the counter affidavit filed by the respondent-State, it was stated that the decision for transfer of the petitioner was taken by the Establishment Committee and it has no concern with letter issued by the Minister, Human Resources Development Department, Govt. of Jharkhand. The learned Single Judge after holding that in the letter of Minister there is no mention of the name of the petitioner and he was not transferred at the instance of the Minister, dismissed the writ petition. Hence, this appeal.

6. Mr. P.K. Prasad, learned Counsel appearing for the appellant, assailed the impugned judgment of the learned Single Judge on the ground, inter alia, that the learned Single Judge has not at all considered the relevant facts and documents annexed with the writ petition. Learned Counsel drew our attention to the relevant annexures and submitted that both the appellant and respondent No. 6 - Om Prakash Singh, are Assistant Engineers of Road Construction Department and as a matter of fact, respondent No. 6 was posted as Assistant Engineer, NREP, Ranchi since July, 2001 and by notification dated 13.12.2004 he was transferred and posted as Assistant Engineer, NREP at Godda. It is submitted that although respondent No. 6 was transferred to Godda, but he continued to remain in Ranchi and was relieved in the month of April, 2006 to join at Godda. But in the meantime, on the basis of letter issued by the Minister, a notification was issued whereby services of respondent No. 6 was taken from the Road Construction Department

to the Welfare Department and by the said notification, he has been illegally transferred to Ranchi in place of the petitioner as Assistant Engineer. Learned Counsel further submitted that the learned Single Judge has not at all considered this aspect of the matter and dismissed the writ petition holding that the impugned order of transfer was not mala fide or on the basis of any pairvi made by the Minister.

7. Mr. Ajit Kumar, learned Counsel appearing for respondent No. 6, on the other hand, submitted that the very decision of transfer has been taken by the Establishment Committee and it has no concern with the letter issued by the Minister. Learned Counsel submitted that there is nothing in the record to show that the transfer of the petitioner was mala fide.

8. The first question that falls for consideration is as to whether respondent No. 6 was transferred at the instance of the Minister. Both the appellant and respondent No. 6 are the Assistant Engineers, Road Construction Department. The services of the appellant was handed over to the Welfare Department vide notification dated 29.06.2005 and he was transferred and posted as Assistant Engineer MESO Area, Ranchi and since then he was working on the post of Assistant Engineer, MESO Area, Ranchi. By letter dated 3.11.2006 Sri Bandhu Tirkey, Minister of Human Resources Development Department, requested the Chief Minister who is also the Minister of Road Construction Department, to hand over the services of two officers including respondent No. 6 to the Welfare department. Immediately, thereafter a notification was issued by the Welfare Department on 30.12.2006 placing the services of respondent No. 6 to the Welfare department and by the same notification respondent No. 6 was posted as Assistant Engineer, MESO Area, Ranchi in place of the writ petitioner-appellant whereas the appellant was transferred and posted as Assistant Engineer, MESO Area, Latehar. It would be useful to quote the letter of the Minister which reads as under:

1361/Ran/06 Dated 3/11/06Seva Men,

Manniya Mukhyamanti,

Sah Path Nirman Manti,

Jharkhand Sarkar,

Ranchi.

Karyahit men nimnalikhit Abhiyantaon ki sewa Kalyan Bibhag to Deua Challenge.

(1) Shree Rajiv Ranjan - junior Engineer, Road Construction department.
(Padasthapan Ki Praticha Me)

(2) Shree Om Prakash Singh - Sahayak Abhiyanta, N.R.E.P. - Godda

Kripayn

Sd/-

(Bandhu Tirki)

Mantri

Manav Sansadhan Vikas,

Kala, Sansikriti, Khel-Kud kAvam Yuva

Karya Vibhag,

Jharkhand Sarkar

9. It is, therefore, clear that at the instance of the Minister the services of respondent No. 6 was placed from Road Construction Department to the Welfare Department and he was transferred and posted in place of the appellant-writ petitioner.

10. We called for the departmental file to find out the correctness of the allegation made by the appellant. In the said file the letter of Sri Bandhu Tirkey, Minister, Human Resources Development Department was dealt and a note was placed by the Secretary, Road Construction department before the Chief Minister stating that on earlier occasions the Welfare department refused to accept the services of other officers of different Department on the ground that it was never demanded,

Inspite of that, approval was obtained from the Welfare department and the services of respondent No. 6 was placed in the Welfare department by issuing notification dated 8.12.2006.

11. It is worth to mention here that respondent No. 6 was earlier posted in his parent department i.e. Road Construction Department Thereafter his services were transferred and posted under Rural Development Department in NREP, Ranchi and in 2004 respondent No. 6 was transferred and posted as Assistant Engineer, NREP, Godda but he continued as Assistant Engineer, NREP. Ranchi. Only in the month of April, 2006 respondent No. 6 was relieved to give his joining on the post of Assistant Engineer, NREP, Godda and within a short span of time, at the instance of the Minister, respondent No. 6 got his services placed in the Welfare department and, thereafter posted as Assistant Engineer, MESO, Area, Ranchi in place of the writ petitioner- appellant.

12. Besides the above, there is allegation and counter allegation by and between the appellant and respondent No. 6 about the initiation of departmental proceeding and/or facing charges departmentally. The State, on the other hand, has justified the transfer of the appellant because of many complaints against him.

13. In the aforesaid premises, in our view, for better administration and in the public interest, it would be just and proper and for the Government to transfer and post both the appellant and respondent No. 6 in any place other than in the district of Ranchi. Considering the letter of the Minister, the learned Single Judge is not correct in holding that the name of the writ petitioner does not appear in the letter issued by the Minister concerned.

14. In such situation this appeal is allowed and the impugned judgment and order passed by the learned Single Judge is set aside. Consequently the impugned notifications of transfer and posting of the appellant and the respondent No. 6 are also set aside. The concerned department of the Govt. of Jharkhand is directed to issue fresh notification within two weeks from today transferring and posting both the appellant and respondent No. 6 to any place other than in the district of Ranchi.

