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Sunil Kumar Singh Vs. Health

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Court : Jharkhand

Decided On : Jul-22-2015

Appellant : Sunil Kumar Singh

Respondent : Health

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S). No. 2464 of 2015 Sunil Kumar Singh .... Petitioner Versus 1. State of Jharkhand 2. The Principal Secretary, Department of Health, Medical Education, and Family Welfare, Govt. of Jharkhand, Ranchi 3. The Deputy Secretary, Department of Health, Medical Education, and Family Welfare, Govt. of Jharkhand, Ranchi 4. The Joint Secretary,Department of Health, Medical Education, and Family Welfare, Govt. of Jharkhand, Ranchi 5. The Director-in-Chief, Department of Health, Medical Education, and Family Welfare, the Directorate, Namkum, Ranchi 6. The Regional Deputy Director, Department of Health, Medical Education and Family Welfare, North Chottanagpur Division, Hazaribag. ..... Respondents .... CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners : M/s Sudarshan Shrivastava, Ashok Kumar For the Respondents : Mr. Rahul Kamlesh, J.

C to Mr. Bhawesh Kumar, S.C.II0522.07.2015 Heard learned counsel for the parties. Petitioner is in the second round of litigation over a transfer effected vide notification dated 25.3.2015 issued by the Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand, Ranchi where under petitioner has been transferred from the post of Civil Surgeon, Ramgarh to the post of

Medical Officer, Sub Divisional Hospital, Chakradharpur, Chaibasa. Earlier petitioner has challenged the said notification dated 25.3.2015 in W.P.S. No. 1251 of 2015 inter-alia on the grounds that it amounts to demotion as he has been now posted as Medical Officer, Sub Divisional Hospital, Chakradharpur from the post of Civil Surgeon, Ramgarh and that too within a period of 3 months from the previous posting at Ramgarh in December, 2014. Similar challenge to the said notification dated 25.3.2015 by other aggrieved persons were decided by a common judgment passed in W.P.S. No. 1251 of 2015 and other analogous cases on 22.4.2015 , Annexure-3. It appears from perusal of the said judgment that common grounds urged to assail the impugned notification on behalf of the petitioners were inter-alia (i) that petitioners have been demoted from the higher post to the lower post without any departmental proceeding or show cause; (ii) that -2- petitioners have been posted at the place where the Controlling Officers i.e. the Civil Surgeon cum Chief Medical Officers are junior to the individual petitioners as per the combined gradation list;(iii) as per the hierarchy of posting and strength of the cadre provided under the Medical Services (Recruitment, Promotion and other Service Condition) Rule, 2010, petitioners were paid higher scale of pay equivalent to the higher post of hierarchy and now are being posted in one or the other place on the basic feeder cadre post, which has prejudiced them as it would amount to reduction in pay scale and (iv) plea relating to the claim of higher cadre of post based upon the pay scale in a prescribed pay band being presently received by individual petitioners were also canvassed. This Court after considering the rival pleas of the parties did not find any error of law, procedure or facts in the impugned notification of the transfer so as to warrant interference by this Court. However, it was found that the respondents themselves had expressed their inclination to look into the individual cases of discrepancy where one or the other Officers were posted at such places where the Controlling Officers i.e. Civil Surgeon cum Chief Medical Officers were junior to them as per the combined gradation list. Respondents had indicated that individual grievance of the petitioners would be considered by placing the matter before the competent authority and the Departmental Establishment Committee. It is to be noted that in the case of present petitioner, it had not been shown that he has been posted under the Controlling Officer i.e. Civil Surgeon cum Chief Medical Officer, who was junior to him in the gradation list.

Therefore, without interfering with the impugned notification of transfer, the writ petition was disposed of by directing the respondents to consider the individual discrepancy in the matter of transfer as claimed by the petitioners within -3- stipulated period. Since, there was an interim order of stay dated 31.3.2015 in the case of present petitioner, it was observed that the present petitioner may not be relieved till a decision is taken on his representation. On consideration of petitioner's representation vide impugned reasoned order at Annexure-5 dated 5.6.2015 passed by the Principal Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand, Ranchi, the claim of the petitioner has been declined. On perusal of the said order it appears that it has been found that there is no demotion of the petitioner as he has never been substantively promoted to the post of Civil Surgeon by any notification or order of the Department. Petitioner would continue to avail the present pay scale in prescribed pay band and would not suffer monetary loss at the transferred place. The order of transfer has been issued in exigency of work and in larger public interest. The order of transfer of the petitioner as Medical Officer at Sub Divisional Hospital, Chakradharpur has been sustained by the Principal Secretary. Once again in the present writ petition, learned counsel for the petitioner has raised the issue of violation of provisions of Rules of 2010, Annexure-6, where under petitioner, who is getting the pay scale in the pay band of Rs.76,00/- in the third hierarchy of Civil Surgeon has now been been equated with the basic cadre post of Assistant Civil Surgeon / Medical Officer, who are placed at the pay band of Rs.54,00/-. It is submitted that placing the services of the petitioner in the basic cadre post, which has lower pay band of scale would not be in public interest when the services of the petitioner has been used earlier as Civil Surgeon of the Ramgarh District. It is further submitted that one or the other Officers who have also assailed the impugned notification have been shifted to one or the other place commensurate to the scale of pay and -4- grade pay, however, petitioner has been discriminated. Reference has been made to Annexure-8 to the rejoinder affidavit. Learned counsel for the respondent- State has defended the impugned reasoned order passed by the Principal Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand, Ranchi stating that the case of the petitioner is not of demotion as he has never been substantively promoted to the

higher post. I have considered the rival submission of the parties in the light of factual matrix of the case. As has been noticed in the earlier part of the judgment, there were few common grounds on which the impugned notification of transfer dated 25.3.2015 were assailed by the petitioner and the others. Petitioner had not shown that he was posted at the place where he was serving under the Controlling Officer i.e. Civil Surgeon cum Chief Medical Officer, who is junior to him as per the combined gradation list. His grievances were essentially related to the ground of demotion from the post of Civil Surgeon to that of Medical Officer of Sub-divisional Hospital. So far as the third ground relating to hierarchy of post prescribed under Rule 3 of the 2010 Rules is concerned, it was the case of the respondents then and now also that the present petitioner or any other person have not been promoted to the substantive post of Civil Surgeon in the State of Jharkhand and petitioner is continuing in the basic cadre post. The scale of pay and pay band, which the petitioner enjoys are only financial up-gradation received by them which cannot be equivalent to substantive promotion to the post of Civil Surgeon. Apparently, the Principal Secretary, Department of Health, Medical Education and Family Welfare has also considered the grievances of the petitioner in the reasoned order and taken a view that petitioner would not suffer monetary loss on account of his transfer as Medical Officer in the Sub Divisional Hospital, -5- Chakradharpur as he belongs to basic cadre post like other Officer in the State. Petitioner has referred to the subsequent notification dated 30.6.2015 annexed as Annexure-8 to the rejoinder, though no specific instances of discrimination are made out in pleadings. Therefore, no observations or findings can be made on this plea. In the present case, since the original notification of transfer was found to be not suffering from any error of law, procedure or facts, this Court had declined to interfere with the same on the grounds previously raised by the petitioner. On the present ground, which has been agitated by the petitioner thereafter by way of representation, no reason for interference has been found by the Principal Secretary of the respondent- Department, as discussed herein above. Therefore, in view of the discussions made herein above, this Court is persuaded to believe that no grounds are made out for interference in the impugned order of rejection of petitioner's representation at Annexure-6 dated 1.5.2015. The writ petition is dismissed accordingly. Interim order, if any, stands vacated. (Aparesh Kumar

Singh, J.) A. Mohanty

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