

Dhananjay Kumar and Anr Vs. Health

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Court : Jharkhand

Decided On : Oct-27-2016

Appellant : Dhananjay Kumar and Anr

Respondent : Health

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4293 of 2016

1. Sunil Prasad, son of Late Rameshwar Prasad, resident of Radha Krishna Niwas, Pandit Sundar Lal Mishra Road, Casters Town, PO&PSDeoghar, DistrictDeoghar

2. Sukri Kumari, wife of Sikandar Baraik, resident of New Tonki Toli, Sarhul Nagar, Bariatu, PO&PSBariatu, DistrictRanchi

3. Arunanand Jha, son of Late Balanand Jha, resident of Jhausagarhi, Baijnathpur, behind Refugee Colony, PO&PSKunda, DistrictDeoghar
Petitioners Versus 1.The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Jharkhand Mantralaya, Project Bhawan, PO&PSDhurwa, DistrictRanchi

2. The Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi

3. The Joint Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, Ranchi

4. DirectorinChief, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi Respondents with W.P.(S) No. 4297 of 2016

1. Rita Devi, wife of Late Suresh Prasad, resident of C/o Dr. P. Ram, DSP Road, Murli Bagicha, PO&PSGumla, DistrictGumla

2. Jai Prakash Narayan Singh, son of Nilkanth Singh, resident of Flat No. 101, Radha Rani Apartment, Cheshire Home Road, Dipatoli, POBariatu, DistrictRanchi

3. Abhishek Kumar Sinha, son of Late Subodh Kumar Sinha, resident of villageMandai Kalan, POSudhar Vidhyalaya, PSSadar, DistrictHazaribag
Petitioners Versus 1.The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Jharkhand Mantralaya, Project Bhawan, PO&PSDhurwa, DistrictRanchi

2. The Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi

3. The Joint Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, Ranchi 2

4. DirectorinChief, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi Respondents with W.P.(S) No. 4327 of 2016

1. Shailendra Kumar Rana, son of Late Yogendra Nath Rana, resident of Patel Nagar, POHarmu, PSArgora, DistrictRanchi

2. Rajesh Kumar Mallick, son of Late Baldev Mallick, resident of Shankar Nagar, Brahm Toli, near Don Bosco, PO&PSBariatu, DistrictRanchi Petitioners

Versus 1.The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Jharkhand Mantralaya, Project Bhawan, PO&PSDhurwa, DistrictRanchi

2. The Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi

3. The Joint Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, Ranchi

4. DirectorinChief, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi Respondents with W.P.(S) No. 4404 of 2016

1. Dhananjay Kumar, son of late Sudama Prasad, resident of PMCH, Dhanbad, POBCCL Township, PSSaraidhela, DistrictDhanbad

2. Kumar Amit, son of Late Dr. Virendra Kumar Singh, resident of Karnibad, PODeoghar, PODeoghar, DistrictDeoghar Petitioners Versus 1.The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Jharkhand Mantralaya, Project Bhawan, PO&PSDhurwa, DistrictRanchi

2. The Principal Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi

3. The Joint Secretary, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand Mantralaya, Nepal House, PO&PSDoranda, Ranchi

4. DirectorinChief, Department of Health, Medical Education & Family Welfare, Government of Jharkhand, Jharkhand 3 Mantralaya, Nepal House, PO&PSDoranda, DistrictRanchi Respondents ----- CORAM:
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner(s) : Mr.

Indrajit Sinha, Advocate Mr. Arpan Mishra, Advocate For the State : Mr. Jai Prakash, AAG Mrs. Chaitali C. Sinha, J.C. to AAG Ms. Shruti Shrestha, J.C. to AG
----- 06/27.10.2016 Heard.

2. Mr. Indrajit Sinha, the learned counsel appearing for the petitioners in all four writ petitions submits that the issue involved in all the writ petitions is common and the petitioners have raised similar grounds for challenging order contained in memo dated 01.08.2016, whereby the earlier orders of transfer have been recalled by the DirectorinChief, Department of Health, Medical Education and Family Welfare, Government of Jharkhand.

3. The learned counsel for the petitioners raises two fold contentions ; (i) Once an order of transfer has been given effect to, nothing remains there for recall and in that view of the matter order dated 01.08.2016 recalling the earlier transfer orders is bad in law. The learned counsel relies on the decision in Ram Prasad Mahto and Ors. vs. the State of Jharkhand and Ors. reported in 2003

(1) JLJR 427 (Jhr.) for this proposition. (ii) The plea taken by the respondentState that the DirectorinChief, Department of Health, Medical Education and Family Welfare, Government of Jharkhand is not competent and had no jurisdiction to issue orders of transfer, whereby the petitioners were transferred is contrary to decision of this Court rendered in Dilip Kumar Rabidas vs. the State of Jharkhand and others [W.P. (S) No. 3337 of 2014] whereunder the learned Single Judge of this Court has held that in terms of para 3 and 4 of the circular dated 21.01.1992 issued by the DirectorinChief, Health 4 Department, who is the appointing authority in the matters of Junior and Senior Selection Grade posts of clerk, is competent to issue orders of transfer. Copy of order dated 15.09.2014 passed in W.P.(S) No. 3337 of 2014 has been produced as AnnexureR2 at page16 with the rejoinder to the counteraffidavit.

4. Shri Jai Prakash, the learned Additional AdvocateGeneral appears on behalf of the respondentState and submits that the fundamental defect in the orders dated 20.10.2014, 28.06.2014 and 11.05.2015, which was detected subsequently by the department is that, the orders of transfer by the erstwhile DirectorinChief were issued without approval of the Secretary of the Department. It is contended that by

the impugned order dated 01.08.2016 whereunder the earlier orders of transfer have been cancelled/recalled, the petitioners now have been posted to the place where they were previously posted which, in turn, would amount to fresh order of transfer which can be challenged only on the grounds of arbitrariness and malafide or on the ground that it has been issued in breach of statutory rules. It is further contended that no one can claim posting to a particular place or on a particular post and transfers are effected in administrative exigencies and the courts would not interfere with the decision of the executives. 5. Before adverting the rival contentions, it would be appropriate to notice the facts narrated in W.P.(S) No. 4293 of 2016, which is the lead case. There are three petitioners in this writ petition. The petitioner no. 1 was appointed on 28.02.1980 on the post of Assistant/Clerk, the petitioner no. 2 on 10.11.1980 as ANM and the petitioner no. 3 on 19.08.1987 on the post of Projectionist Assistant; all in the Department of Health, Medical Education and Family Welfare, Government of Jharkhand. In the writ petition, the contentions raised on behalf of the petitioners, at the time of hearing, have not been pleaded. In the counteraffidavit, the respondents have taken a specific stand 5 that orders dated 29.06.2015, 31.12.2014, 20.10.2014 and 28.06.2014 were issued by the then DirectorinChief without approval of the Departmental Head. Not only that, a perusal of the previous orders; some of the orders have been annexed by the petitioners to their rejoinder affidavit, when compared with the abovementioned orders, would disclose that transfer orders can be passed by the DirectorinChief on the recommendation of the Establishment Committee; reference thereof finds mention in order dated 28.06.2013 at page 51 of the rejoinder affidavit. However, some of the abovementioned orders passed in relation to the petitioners were passed without recommendation of the Establishment Committee. Previous transfer orders for the petitioners were issued midyear and those were not issued during annual general transfer exercise. It appears that complaints were received in the department and the matter was examined and a proposal for cancelling the previous orders was placed before the Secretary of the Department who was holding the post of Additional Chief Secretary, and he accorded sanction for recalling the aforesaid orders. In compliance thereof, the impugned order dated 01.08.2016 has been passed.

6. The decision in Ram Prasad Mahto case does not lend support to the plea raised by the petitioners in as much as, in the said case after the order of transfer through notification dated 17.05.2001 was issued, subsequently by notification dated 01.06.2001 para 2 of the previous notification was recalled/cancelled. In the facts of the case, the learned Single Judge held that after the order under notification had taken place and the notification of transfer had spent its force, there was nothing substantive to be recalled. The present is not a case similar on facts to the case of Ram Prasad Mahto. In the present case, transfers were ordered mostly on the representation of the petitioners and in some cases allegedly on humanitarian grounds. As noticed above, the previous transfer 6 orders were issued without approval of the Department. In these facts, I find no illegality in recalling/cancelling the previous transfer orders. 7. Now referring to the decision in W.P.(S) No. 3337 of 2014, I find that in the said order the learned Single Judge held that the Director in Chief, being the appointing authority, is conferred with power to effect transfer of the Junior and Senior Selection Grade Clerks. Order dated 15.09.2014 passed in W.P.(S) No. 3337 of 2014 is confined to the aforesaid aspect only. In the instant writ petitions, the petitioners have not averred that they are Junior or Senior Selection Grade Clerks. Even ignoring the above aspect, I find that the plea taken in the instant writ proceeding by the respondent State, that the department is competent to annul/cancel order of transfer, was not a plea adjudicated in that writ petition. Impugned order dated 01.08.2016 has been issued on the approval of the Additional Chief Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand. As rightly contended by the Additional Advocate General, the petitioners have no vested legal right to claim transfer at a particular place or to a particular post. In these facts, I am of the opinion that the department is competent to annul/recall any order of transfer issued by the Director in Chief.

8. No doubt, in the counter affidavit the respondent State has disputed the competence and jurisdiction of the Director in Chief to transfer the petitioners who belong to district cadre, and the said plea, prima facie, appears unsustainable, however, that would not lend support to the case of the petitioners which fails scrutiny on the settled legal principles. In *State of U.P. and others vs. Gobardhan Lal* reported in (2004) 11 SCC 402, the Hon'ble Supreme Court has observed that,

a challenge to an order of transfer should normally be eschewed..... It has been held that transfer is prerogative of 7 the authorities concerned and the Court should not normally interfere therewith, except when (i) transfer order is vitiated by malafide, or (ii) issued in violation of statutory provision, or (iii) has been passed by an authority who was not competent to pass such an order. In *Kendriya Vidyalay Sangathan vs. Damodar Prasad Panday and others* reported in (2004) 12 SCC 299, the Hon'ble Supreme Court has observed thus; 4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa* [1995 Supp (4) SCC 169]. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India v. S.L. Abbas* [(1993) 4 SCC 357]). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India v. Janardhan Debanath* [(2004) 4 SCC 245] it was observed as follows: 'No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the 8 employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*[(2001) 8 SCC 574]'.

9. Impugned order dated 01.08.2016 is an order by which previous transfer orders dated 29.06.2015, 31.12.2014, 20.10.2014 and 28.06.2014 have been cancelled, which in effect turns out to be an order of transfer, whereby petitioners stand

transferred to their previous place of posting or to another post upon prior approval of DirectorinChief, Department of Health. The petitioners have failed to establish that the impugned order of transfer dated 01.08.2016 has been issued in breach of statutory provisions or it is actuated with malice in law or facts.

10. Considering the aforesaid facts, I am not inclined to interfere in the matter and accordingly, the writ petitions are dismissed. (Shree Chandrashekhar, J.) Tanuj/

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