

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 1965 of 2020

Shashi Kant Kumar, age about 42 years, s/o Jeonath Prasad, r/o C/o B.P. Srivastav, House No.55, Bank Colony, Chiraundi, Morabadi, PO-Morabadi, PS-Bariyatu, District-Ranchi, Ophthalmic Assistant in Community Health Centre, Senha, PO and PS-Senha, District-Lohardaga, presently working in deputation as Ophthalmic Assistant in RINPAS, PO and PS-Kanke, District-Ranchi
... Petitioner

-Versus-

1.The State of Jharkhand

2.The Principal Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Ranchi, at Nepal House, PO and PS Doranda, District-Ranchi

3.The Director-in-Chief, Health Services, Jharkhand, Ranchi at Directorate of Health Services, at Nepal House, PO and PS Doranda, District-Ranchi

4.The Deputy Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Ranchi, at Nepal House, PO and PS Doranda, District-Ranchi

5.Director, Ranchi Institute of Neuro Psychiatry and Applied Sciences, PO and PS-Kanke, District-Ranchi
... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Rajeeva Sharma, Sr. Advocate
 For the State : Mr. Ashok Kumar Yadav, G.A.-I

4/11.09.2020. Heard Mr. Rajeeva Sharma, the learned Senior counsel appearing on behalf of the petitioner and Mr. Ashok Kumar Yadav, the learned Government Advocate-I appearing on behalf of the respondent-State.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation

arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

3. The petitioner has preferred this writ petition for quashing the order dated 17.03.2020 contained in Annexure-1 whereby the petitioner has been transferred to Community Health Centre, Bhavanathpur, Garhwa.

4. The petitioner is Ophthalmic Assistant posted in Community Health Centre, Senha, Lohardaga and has been discharging his duties on deputation in RINPAS, Kanke, Ranchi with effect from 08.01.2019. He has been transferred to Community Health Centre, Bhavanathpur, Garhwa by way of impugned order dated 17.03.2020.

5. The learned counsel appearing for the petitioner has assailed the impugned order on the ground that this impugned order has been issued on the basis of allegation and in that view of the matter it is punitive in nature and he further submits that if the order is punitive in nature, that must go. The petitioner is on deputation since, January, 2019. He further submits that in view of Annexure-8 contained in Supplementary Affidavit, the impugned order has been issued. By Annexure-8 dated 19.02.2020, the show cause submitted by the petitioner was rejected. He submits that only on the allegation of one person this transfer order has been passed. He draws the attention of the Court to the prescription contained at page no.26 of the writ petition and submits that the eye specialist has signed this prescription and the signature of this petitioner is also there. He submits that in view of this, it cannot be said that the petitioner alone has issued the prescription. The complaint is that the petitioner is not

authorized to issue prescription. He further draws the attention of the Court to page no.28 of the writ petition and submits that the duties are prescribed therein and one of the duties is to test the vision and prescribe glasses. He submits that in that view of the matter, the petitioner has not acted beyond his duty. He further submits that the case of the petitioner is fully covered in view of the judgment rendered by the Hon'ble Supreme Court in case of "*Somesh Tiwari v. Union of India and Ors.*" reported in (2009) 2 SCC 59 and a co-ordinate Bench judgment of this Court passed in the case of "*Ram Bihari Prasad Singh v. The State of Jharkhand & Ors.*" in *W.P.(S) No.329 of 2019*.

6. Mr. Yadav, the learned counsel for the respondent State has transmitted the letter dated 10.09.2020 through e.mail and submits that letter dated 13.07.2018 has been cancelled vide letter dated 10.09.2020.

7. Let the transmitted e.mail document be kept on record and the reply received by the petitioner through e.mail be also kept on record.

8. Mr. Ashok Kumar Yadav, the learned counsel appearing for the respondent State submits that the petitioner is on deputation only and he has been found not discharging his duties diligently. The complaints were received against the petitioner. He refers to page no.20 of the writ petition and submits that this is the complaint received against the petitioner by one Dr. Pankaj Kumar, Eye Specialist, RINPAS. He further submits that the documents relied by Mr. Sharma, the learned counsel for the petitioner of 2008 is only proposed and it has not been adopted as yet. By way of referring to the Gazette notification for appointment to the post of the petitioner which has been issued under Article 309 of the Constitution of India, he submits that the duties are not prescribed. He

further submits that 06.07.2013 document is in force and thus, the 2008 document cannot be relied by the petitioner. In reply, Mr. Sharma, the learned senior counsel draws the attention of the Court to the reply and submits that this 2008 document is in force in view of this letter dated 13.07.2018 issued by the Director cum State Blind Control Officer.

9. Having heard the learned counsels appearing for the parties, the Court finds that the petitioner was transferred to Garhwa taking into account the letter No.42(15) dated 19.02.2020 contained in Annexure-A. By this letter, reply to the show cause filed by the petitioner has been rejected and the request was made to transfer him to any other place. The prescription annexed with the writ petition suggests that it has been signed by eye specialist wherein the signature of this petitioner is also there. Reply filed to the counter affidavit demonstrates that letter no.83(6) dated 06.06.2008 was in force. In view of these documents, the Court is not entering into this aspect of the matter as to whether the 2008 document was in force or 2013 documents are in force but the materials on record suggest that the transfer order has been issued on certain allegation. The Court also take note of this fact that the petitioner is working on deputation; to continue on a deputation post, it is not a right of the petitioner to continue on the said post, but since this order of transfer is on the basis of letter no.42(15) dated 19.02.2020 by which the show cause of the petitioner has been rejected suggests that it is punitive in nature. It is well settled provision of law that the transfer orders are being reviewed by the Court under Article 226 of the Constitution of India on a limited ground. The order of transfer is an administrative order. Generally, a transfer orders issued on administrative exigencies are not

being interfered by the Court under Article 226 of the Constitution of India. Here, in the case in hand, the materials on record suggest that it has been issued on certain allegation and in view of the law laid down by the Hon'ble Supreme Court in case of "*Somesh Tiwari v. Union of India and Ors.*" (*supra*) and a co-ordinate Bench judgment of this Court passed in the case of "*Ram Bihari Prasad Singh v. The State of Jharkhand & Ors.*" (*supra*), the impugned order dated 17.03.2020 cannot sustain in the eye of law, and accordingly, it is quashed.

10. The Court took note of this fact that the petitioner is working there on deputation; to continue on a deputation post is not a right, and in that view of the matter, the respondent State is at liberty to take a fresh decision with regard to the transfer of the petitioner.

11. With the aforesaid observation and direction, the instant writ petition [W.P. (S) No. 1965 of 2020] stands allowed and disposed of.

12. I.A., if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)