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**(2004) 09 PAT CK 0141**

**Patna High Court**

**Case No:** C.W.J.C. No. 9469 of 2004

Shashi Bhushan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Sept. 17, 2004

**Citation:** (2004) 4 PLJR 630

**Hon'ble Judges:** Shashank Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Ramesh Kumar Dutta, Ashok Kumar Dubey in 9469; M/s Ganesh Pd. Singh, Rajni Kant Jha in 8563 and Mr. Manish Kumar in 8685, for the Appellant; K.P. Yadav and Ahsanuddin Amanullah (in 9469) and M/s Pushkar Narain Shahi, Manoj Kumar No.1 (in 8563), for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Shashank Kumar Singh, J.

All the three writ applications were made analogous and heard together and with the consent of the parties are being disposed of at the stage of admission itself. The writ petitioners of all the three writ applications are aggrieved by the order as contained in memo no. 3035 dated 20 July, 2004 issued under the signature of Managing Director, Bihar State Agriculture Marketing Board, Patna so far it relates to their respective transfers and pray for quashing of that part of the aforesaid office order.

2. C.W.J.C. No. 9469 of 2004 has been preferred by one Shashi Bhushan Singh who has been transferred from Market Committee, Gulab Bagh to Market Committee, Mohania, Kaimur (Bhabua) and again from Mohania to Bihta as the same has been passed without considering the achievement and total target and other aspects of the matter relating to his being posted in the aforesaid area for hardly a few months or considering his representation which has been filed in this regard.

3. Similarly C.W.J.C. No. 8685 of 2004 has been filed by one Syed Ejazur Rahman who is also aggrieved by the same order issued under the signature of Managing Director whereby he has been transferred from the post of Marketing Secretary, Bihta to the post of Assistant Director, Headquarter and one Shashi Bhushan Singh, the writ petitioner in C.W.J.C. No. 9469 of 2004 being posted in his place. The said transfer order so far it relates to this petitioner has also been challenged on similar ground and further as to whether a person can be transferred frequently from one place to other destabilising him and his family.

4. C.W.J.C. No. 8563 of 2004 has been preferred by one Surendra Prasad Yadav who is also aggrieved by the same transfer order so far it relates to him by which he has been transferred from Muzaffarpur to Begusarai. The contention is that he was Market Secretary in Patna City and by the decision of the Establishment Committee dated 3.6.2004 he was transferred to Muzaffarpur where he took over the charge on 9.6.2004 but by the impugned order he has been transferred from Muzaffarpur to Begusarai only to accommodate one Manoranjan Kumar and bestowed undue favour to Manoranjan Kumar.

5. In this regard, it has been contended that the aforesaid Manoranjan Kumar was posted at Darbhanga where Arvind Chandra Sinha had been posted. However, as the said Arvind Chandra Sinha filed C.W.J.C. No. 6848 of 2004, by the present order he was posted again at Darbhanga but this time again to accommodate Manoranjan Kumar, the petitioner has been removed from Muzaffarpur and was being posted at Begusarai. The aforesaid transfer orders have otherwise also been challenged.

6. As far as writ petitioner of C.W.J.C. No. 9469 of 2004 is concerned, the ground taken for challenging the aforesaid order of transfer is that the same has been done without considering the achievement of total target achieved by the petitioner at his initial place of posting and without considering his representation dated 12.6.2004. The petitioner who was initially appointed as Grading Inspector on 15.4.1974 was promoted to the post of Market Secretary on 7.12.1989. It has been contended that vide Annexure-3 the order dated 20.6.2002 the petitioner was posted as Market Secretary, Gulabbagh, Purnea. The petitioner took charge on 26.6.2004 till the last order of transfer was passed. It is contended that the petitioner was transferred earlier on 3.6.2004. Petitioner being aggrieved by filed C.W.J.C. No. 6562 of 2004 challenging the aforesaid order of transfer. A Bench of this Court by order dated 10.6.2004 on the prayer of the petitioner allowed him to file a fresh representation before the competent authority i.e. the Managing Director and if such a representation was filed, the same was directed to be disposed of within two weeks from the date of its filing. The aforesaid order of transfer was not interfered with.

7. It appears that the petitioner has filed a representation and order dated 23.6.2004 as contained in Annexure-13 was passed allowing him to continue at Mohania. However, by the impugned order now the petitioner has been transferred to Bihta. By bringing a list on record i.e. Annexures-14 and 15 it has been contended that this

gradation list goes to show that against the total target the petitioner achievements was sixth highest. However, it has been contended that out of the transfer, persons who have been given a place where the target is more than that of the petitioner, four persons are such whose performance were inferior to the petitioner but they have been given better post. The contention is that there is already a resolution of the Cabinet Secretariat and the Coordination Department regarding transfer/posting but the same has not been adhered to even choice posting has been given to one Vidyut Prakash and Nandlal Mahto but the petitioner who has hardly few years left has not been given the choice posting but in spite of his better performance has been transferred to a lower grade (smaller) market Area.

8. As far as the writ petitioner of C.W.J.C. No. 8685 of 2004 is concerned, it has been contended that he joined the service as Market Secretary in the Board in the year 1974. He was transferred from the post of Secretary of the Agricultural Produce Market Committee, Buxar to Begusarai on 22.9.1988. However, even less than a year after, on 15.6.1999 he was again transferred from Begusarai to Muzaffarpur. Again within one and half years the petitioner was transferred from Muzaffarpur to Sitamarhi vide office memo no. 215 dated 21.12.2000. Again on 20.6.2002 the petitioner was transferred from Sitamarhi to Danapur and again after one and half year, the petitioner was transferred from Danapur to Purnea as Assistant Director, Agriculture vide order dated 27.12.2003. The petitioner was again transferred as Market Secretary at the Board's Headquarter where he was allotted the work of Chief of Grading and Weights. Vide Annexure-6 the order dated 3.6.2004 which is a general order of transfer, by which 19 persons including the petitioner were transferred. The petitioner was posted as Market Secretary, Bihta. The petitioner joined the aforesaid post on 10.6.2004. It has further been contended that one Arvind Chandra Sinha who was aggrieved by the aforesaid transfer order, moved this Court by filing C.W.J.C. No. 6848 of 2004 and this court by order dated 13.7.2004 directed the respondents to look into the matter considering the work discharged by all such persons similarly situated and come out with a fair and proper stand. It has further been contended that the said Arvind Chandra Sinha was working as Market Secretary at Gaya upto 8.6.2004 was transferred to Market Committee, Darbhanga vide memo no. 2291 dated 3.6.2004. Another person i.e. Manoranjan Kumar was at that time posted at Darbhanga. Thereafter, the impugned order has been passed where-by the petitioner has been transferred to the post of Assistant Director, Agriculture at the Headquarters. The contention is that by its order this court had directed the respondent authorities to dispose of the representation of the said Shashi Bhushan Singh, as such, interfering and retransferring the petitioner who was to superannuate in the month of August, 2005 has been said to be arbitrary and in violation of establishment norms.

9. As far as writ petitioner of C.W.J.C. No. 8563 of 2004 is concerned, the contention is that the petitioner had been transferred from Patna City to Muzaffarpur in view of decision of the Establishment Committee dated 3.6.2004. The petitioner also gave

his joining at Muzaffarpur on 7.6.2004 and took over the charge on 9.6.2004 but by the impugned order dated 20.7.2004 the petitioner has again been transferred from Muzaffarpur to Begusarai only to accommodate Manoranjan Kumar and to give him undue favour by giving him a premature transfer to a big committee without considering the case of the petitioner who had joined at Muzaffarpur only a month back.

10. In this regard, it has further been contended that the said Manoranjan Kumar was earlier also accommodated against Arvind Chandra Sinha at Darbhanga but in view of writ petition filed by him being C.W.J.C. No. 6848 of 2004 he was reposted at Darbhanga and the petitioner was made to suffer. The transfer order has been challenged on the ground of violation of establishment norms and the principle of transfer and the direction and the guidelines of the State Government in this regard. It has further been contended that the representation filed by the petitioner on 24.7.2004 has not been disposed of by the Managing Director as yet. Though it has been contended that the petitioner had intervened in the aforesaid writ application itself by filing I.A. No. 3486 of 2004 but the aforesaid I.A. was not entertained rather it was directed that if the petitioner is aggrieved by any order of transfer he can challenge the same before the authority itself or before the appropriate forum. As such, the present writ application has been filed.

11. In nutshell all the three writ petitioners are aggrieved by their order of transfer. It is disputed by none that transfer is an ingredient of their service condition. They are on a transferable post though resolution of the Board has been relied upon and being placed in court to show that usually a transfer order is not required to be interfered with unless the incumbent completes two years" at a place of posting. There are resolutions of the Board itself and directive of the State Government laying down guidelines for transfer of an employee of the Board. Their turn over of an year is one of the considerations rather a major consideration for giving them to posting any bigger market area. However, learned counsel representing the Market Board has emphasised rather produced on record the proceedings which necessitated the passing of the impugned order by which a chain transfer has been done. Earlier transfer order had been passed which was being agitated by filing representations and writ applications before this Court and directions for filing representations and otherwise has been given. While disposing of C.W.J.C. No. 6848 of 2004 by order dated 20.7.2004 a Bench of this Court when after hearing a batch of lawyers who had intervened and the counsel of the writ petitioner, went into the detailed of the said transfers and the stand of the respondent Board found that a chain of transfer effecting pursuant to recommendation made in its meeting on 3.6.2004, 7.6.2004 and 21.6.2004 which was followed by subsequent office order were required to be reconsidered.

12. A further stand of the Board was that Establishment Sub-Committee had reviewed all its earlier recommendations and thereafter has issued a fresh order

after taking into consideration certain principles as enumerated in paragraph-6 of the said supplementary counter affidavit. The said recommendation have been forwarded to the Chairman for approval and the Chairman has approved the recommendation. Further stand was that the Board has already approved the recommendations and consequential orders issued shortly. In view of aforesaid fact, recommendation was disposed of as a subsequent order was being passed and the grievance of the writ petitioner of that writ petition has been set aside. A fact which emerges out of the aforesaid order is that the court was in know of the fact and the stand of the Board was clear that all the recommendations made in its meeting dated 3.6.2004, 7.6.2004 and 21.6.2004 were being reconsidered as such, today, whether any right that too a vested right can be bestowed upon the petitioners in view of any transfer order and in view of recommendation of the aforesaid three dates which was under reconsideration rather reconsidered and a fresh recommendation made. A fact which is being agitated in all three writ applications is that due to some transfer order they had joined at a particular place only recently and would be disturbed if the impugned notification is allowed to be given effect to.

13. As I have already stated above, this court, taking into consideration the fact that the principle, required to be followed, having not been followed and criteria having not been judged properly for the purpose of transfer, had led the Board to review its earlier decisions dated 3.6.2004, 7.6.2004 and 21.6.2004. As such, today, any order, which was pursuant to orders of these three dates cannot be taken into consideration as having bestowed any right on the writ petitioners and they could not have been interfered with and an order which has subsequently been passed, could be set aside on this ground.

14. The second aspect which has been argued by counsel for the Board is that turn over in the Market Yard one is posted is a relevant consideration but calculation of the same as has been brought on record has been challenged and the records have been produced in court to show that the yardstick was strictly followed only the percentage of collection which has been shown by the petitioners in their respective chart have been disputed and it has been shown that there are certain revenues as rents and otherwise which are regular income are to be deducted while calculating the percentage of collection and after the same the chart has been brought on record and it has been shown that more or less the posting has been done strictly taking the chart as per the recovery of the person shown in the continuous preceding years into consideration.

15. As I have already stated above, transfer is an incidence of service and once a general transfer is passed, some person is bound to be affected by the same. If minor discrepancies are to be looked into none of the transfer orders as survived and is always given a chance for one affected party or the other to litigate the same more or less as it is borne out from the record also that yardstick has been followed the guidelines have not been flouted may be a few have been and persons affected

this court is not inclined to interfere the same.

16. This court is satisfied that the impugned order does not suffer from any infirmity. All the three writ applications fail and are dismissed.

17. However, before parting with the order this court (sic-court?) would like to make it clear that at the places where incumbent has less than one year to go and if a representation has been preferred by them against the impugned transfer then the authorities of the Board i.e. the Managing Director, Bihar State Agriculture Marketing Board is obliged to look into the same and pass an appropriate orders in accordance with law. However, there shall be no order as to costs.