

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5228 of 2019

Dr. Tamseel Ahmad Ansari, aged about 47 years, Male, Son of Late Md. Jamaluddin Ansari, Resident of Village-Haspura, Post and Police Station-Haspura, District-Aurangabad. At present resident of Flat No.201, Haque Mansion, Near P.M.C.H., Makhaniya Kunwa, Bankipore, in the District of Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Joint Secretary, Department of Health, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Government of Bihar, Patna.
4. The Deputy Director, Health Services, Government of Bihar, Patna.
5. The Regional Additional Director, Health, Patna Division, Patna.
6. The District Magistrate, Bhojpur at Ara.
7. The Chief Medical Officer, District-Bhojpur at Ara.
8. The Civil Surgeon-cum-Superintendent, Sadar Hospital, District-Bhojpur at Ara.
9. The Superintendent, Sadar Hospital, Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Nivedita Nirvikar, Adv.
For the Respondent/s : Mr. Neeraj Kumar, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 15-04-2019

Heard Ms. Nivedita Nirvikar, learned counsel for the petitioner and Mr. Neeraj Kumar, learned AC to GA-10.

2. The petitioner has challenged the order dated 26.02.2019, issued under the signature of the Joint Secretary, Govt. of Bihar, Patna in the Department of



Health, contained in Memo No. 775(2), whereby the petitioner and others have been transferred to different places. The petitioner, in this instance, who was posted as a Medical Officer in Sadar Hospital, Arah has been transferred to Sadar Hospital, Kishanganj.

3. The submission on behalf of the petitioner is that though the transfer order is couched in such a term so as to give an impression that it has been passed on administrative grounds, but the real fact is different.

4. The District Magistrate, Arah in his anxiety to ensure effective hospital administration and preventing Doctors from taking-up private practice, thought it prudent to ensure the presence of the Doctors during working hours of the hospital by insisting upon them to mark their presence by bio-metric method and when that was objected, then again importuning them to twice appear in video conference with the District Magistrate, Arah on one side and the Doctors posted in the Sadar Hospital, on the other. This was also objected vociferously.

5. The records of the case indicate that on a



particular day, when an effort was made by the District Magistrate to have the Doctors summoned, a confusion arose in the mind of the Doctors that perhaps the petitioner, who at the relevant time was in O.T., has been arrested. This wrong information got further fillip by the misleading response of one Doctor, namely, Dr. Naresh. This led to the Doctors standing up in arms against the District Magistrate and his security personnel. Vexed by the action of the District Magistrate and the District Magistrate, on the other hand, aggrieved by the insubordination of the Doctors, both made complaints against each other at all the fora.

6. An Enquiry Committee was set-up on 27.11.2018, *i.e.*, after about a week of the occurrence in the hospital about which reference has been made in the preceding paragraph. The Committee comprising three members, after examining the Doctors and other stakeholders, submitted a report dated 13.12.2018 concluding that it was only because of the insistence of the Doctors for not marking their presence through video conferencing, that such an occurrence took place. The entire



part of the occurrence could not be video-graphed as the recording stopped midway. However, the report, referred to above, clearly indicates that if the Doctors did not behave professionally, the District Magistrate also was responsible, to a large extent, for this pandemonium in the hospital.

7. The transfer order, which has been impugned in the present petition, incidentally is of the month of February, 2019.

8. Though an effort has been made by the learned counsel for the petitioner to link the transfer with the aforesaid confrontation between the Doctors and the District Magistrate, Arah and he being instrumental for the same, thereby alleging the order of transfer to be a punishment, more so, in the case of the petitioner, who stood transferred from Arah to Kishanganj, but this Court could not find any material except the background facts of dispute between the Doctors and the District Magistrate at the two end of the spectrum, suggesting any linkage.

9. The learned counsel for the petitioner has vehemently argued that the order impugned has very



tactfully been drafted, avoiding any evidence of it being punitive in nature, but if the veil from order is lifted, other than administrative grounds as professed in the order, venomous and malevolent action would be laid bare.

10. Even if this submission/assumption is accepted to be true, in the absence of any direct linkage between the transfer and the incident which took place sometimes in the month of November, 2018 in the Sadar Hospital, Ara, it would be difficult to hold the transfer of the petitioner as punitive.

11. The law with respect to judicial interference in matters of transfer is too well established for it to be recounted in the present order.

12. The grounds of challenge further get diluted because of the petitioner being posted in Arah Sadar Hospital for the last fifteen years and no employee, much less the petitioner in his capacity as Doctor, can claim to remain perpetually at one place.

13. Ms. Nirvikar, however, has, in the alternative, submitted that a direction be issued that the



representation which was filed by the petitioner earlier to the order of transfer on the ground of the petitioner having no interest in continuing at Arah for now, for revisiting the order of transfer to any other place, preferably Patna, be disposed off by the concerned authorities.

14. In support of the contention that the petitioner has filed such representation before the concerned authority and his deteriorating health because of heart disease, certain documents have been put across the board, which have been accepted and have been made part of the record.

15. The aforesaid prayer does not appear to be unreasonable.

16. Under the aforesaid circumstances, the prayer with respect to forestalling the order/quashing the order of transfer, so far as the petitioner is concerned, is rejected.

17. The petitioner ought to join at the transferred place of posting within the time so specified.

18. However, it would be open for the petitioner



to make a representation before the Principal Secretary, Department of Health, Govt. of Bihar, Patna afresh within a period of two weeks from today, annexing a copy of this order and all the documents indicating his heart ailment and the necessity of the petitioner being in constant touch with his Doctor for his treatment. On receipt of such representation, the Principal Secretary, Department of Health, Govt. of Bihar, Patna shall look into the matter in correct perspective, without being unduly influenced by the hullabaloo which had occurred in the Sadar Hosptial, Arah, for which some part of the blame was put on the petitioner, and shall dispose off such representation like a model employer, within a further period of two weeks by a reasoned order.

19. With the aforesaid observation/direction, the writ petition stands dismissed.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
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