

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8091 of 2019

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Rajan Kumar S/o Munna Babu R/o-Tagore Colony, P.S.-Bettiah Town,
District-West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Government of Bihar, Patna
2. The Special Secretary, Health Department, Government of Bihar, Patna
3. The Director-in-Chief (Disease Control), Health Services, Government of Bihar, Patna.
4. The Civil Surgeon cum Chief Medical Officer, West Champaran, Bettiah, Bihar
5. The Civil Surgeon cum Chief Medical Officer, Madhepura, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Sahi, Sr. Advocate.
Mr. Surendra Kumar Singh, Advocate
Ms. Tulika Singh, Advocate

For the State : Mr. Vijay Kumar Singh No. I, A.C. to S.C. 18

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 17-12-2019

Heard learned counsel for the parties.

2. The order dated 30.11.2018 passed by the Director-in-Chief (Disease Control), Health Services, Government of Bihar, is under challenge whereby the petitioner, who is working as Clerk in the office of Civil Surgeon, Bettiah, has been transferred and placed at the disposal of office of Civil Surgeon, Madhepura.



3. Short question which has been raised in the present writ application to assail the impugned order of transfer is that the same is in the teeth of statutory rules framed by the State Government of Bihar, namely, *Bihar Swastha Kshetriya Lipikiya Sanwarg Niamawali, 2014*, copy of which, has been brought on record by way of Annexure-1.

4. Mr. P.K. Sahi, learned Senior counsel appearing on behalf of the petitioner has straightway taken me to Rule 16 of the Rules which reads thus.

“16. उपसंवर्गों का नियंत्रण – जिला स्तरीय उपसंवर्ग से संबंधित जिला में अवस्थित स्वास्थ्य विभागीय सभी कार्यालयों/कार्यक्रमों/सभी प्रकार के अस्पतालों के लिपिकीय पदों पर पदस्थापन/स्थानान्तरण किया जायेगा, परन्तु दोनों उपसंवर्गों पर समग्र नियंत्रण निदेशक प्रमुख, स्वास्थ्य सेवाएँ, बिहार का रहेगा और अचानक जरूरत होने पर या किसी जिला में या किसी चिकित्सा महाविधालय अस्पताल में लिपिक के अभाव जैसी अत्यावश्यकता होने पर एक जिला उपसंवर्ग या चिकित्सा महाविधालय अस्पताल उपसंवर्ग के किसी सदस्य को दूसरे जिला उपसंवर्ग या चिकित्सा महाविधालय अस्पताल उपसंवर्ग में, सेवा में उसके प्रवेश के आधार पर उसकी वरीयता को अक्षुण्ण रखते हुए, स्थानांतरित करने की शक्ति निदेशक प्रमुख, स्वास्थ्य सेवाएँ, बिहार को होगी।”

5. Mr. Sahi, has submitted, with reference to Rules 3 and 4 of the Rules that the post of a Clerk in the office of Civil Surgeon falls in District Level Sub-Cadre and transfers, if any, can be made within a District, though in exceptional



circumstances and based on administrative exigencies as mentioned in Rule 16, a transfer can be made outside the District. He has referred to the impugned order dated 30.11.2018 to submit that it does not disclose reason for transfer to another District, outside the cadre, as stipulated in Rule 16 of the Rules.

6. A counter affidavit has been filed on behalf of the State of Bihar wherein it has been admitted that cadre of clerk is a District Level Cadre, but it has been asserted that in case of exigencies or necessities like shortage of clerks in a District, transfer to another District can be made. In the counter affidavit too, there is no reason assigned why the respondents were required to invoke Rule 16 of the Rules. Reliance has been placed on the notings of the concerned file to contend on behalf of the petitioner that the impugned order of transfer has been issued on the oral orders of the Special Secretary of the Department concerned.

7. After having perused the impugned order and examined the statutory rules, I am convinced with the submission advanced on behalf of the petitioner. There is no reason available on record to invoke Rule 16 of the Rules for



Inter district transfer of the petitioner from Bettiah to Madhepura.

8. Considering the above, the impugned order is set aside. This writ application is, accordingly, allowed.

9. It is, however, observed that the respondent shall be at liberty to take appropriate decision, in case of any exigencies as mentioned in Rule 16 of the Rules.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	
CAV DATE	N.A.
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