

(2001) 10 PAT CK 0032
In the Patna High Court
Case No : L.P.A. No. 1144 of 2001

Alakh Nandan Srivastava

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-10-2001

Acts Referred:

Citation : (2001) 3 BLJR 2233

Hon'ble Judges : Nagendra Rai, J; Chandramauli kumar Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nagendra Rai And Chandramauli Kumar Prasad, JJ.—In this Letters Patent Appeal, filed under Clause X" of the Letters Patent of the Court, challenge is to the order dated 25-9-2000 passed by a learned Single Judge in C.W.J.C. No. 114 of 2000, whereby while dismissing the writ application, he has upheld the validity of order dated 30-8-2001 transferring the petitioner from the post of Incharge Head Clerk, Nalanda Medical College and Hospital, Patna to Darbhanga Medical College and Hospital, Darbhanga.

2. By order dated 30th August, 2000, on the recommendation of the Establishment Committee constituted at the level of the Directorate, a number of employees were transferred from one place to another. By the said order the appellant was transferred from the post of Incharge Head Clerk, Nalanda Medical College and Hospital, Patna to that of Darbhanga Medical College and Hospital, Darbhanga,

3. The appellant impugned the order of transfer primarily on the ground that he holds substantive post of Personal Assistant to the Principal, Nalanda Medical College and Hospital, Patna and there being no sanctioned post of Personal Assistant to the Principal or Superintendent in the Darbhanga Medical College and Hospital, he cannot be transferred to that college or hospital. This submission did not find favour with the learned Single Judge and he has held

that by letter dated 1-9-1988 (Annexure F/6) the petitioner's appointment as Personal Assistant was rescinded and he does not hold the substantive post of Personal Assistant.

4. Mr. Banwari Sharma, learned Counsel for the appellant has replayed the same submission which he had advanced before the learned Single Judge. He contends that the finding recorded by the learned Single Judge that promotion of the appellant as Personal Assistant was not substantive and was cancelled by letter dated 1-9-1988, is erroneous in law. He submits that the status of the appellants as Personal Assistant has been decided in Title Suit No. 63 of 1988 by the Munsif, Patna city by judgment and decree dated 10-9-93. He further points out that a Full Bench of this Court in a case filed by the petitioner himself i.e., C.W.J.C. No. 8857 of 1989 by judgment dated 20-12-1989 has held that the appellant shall continue as Personal Assistant to the Superintendent of Nalanda Medical College and Hospital, Patna and as such learned Single Judge, erred in law in going behind the decree of the Civil Court and the judgment of this Court in the aforesaid writ application.

5. It is relevant to State that by order dated 28-4-1987 the Incharge Superintendent, Nalanda Medical College and Hospital, Patna appointed the appellant as Personal Assistant to the Superintendent in the pay-scale of Rs. 785 to 1210. However, by letter dated 1-9-1988 the appellant's appointment as Personal Assistant was rescinded and he was directed to be relieved from the post of Personal Assistant, without delay. Not only this, the fact of his relieving was to be communicated to the Director, through the special messenger. On perusal of this letter we have no doubt in our mind that the order of promotion of the appellant was cancelled and the learned Single did not err in holding so.

6. As regards the judgment and decree of the Civil Court in Title Suit No. 63 of 1988, we are of the opinion that the same does not lend any support to the appellant's case. In the said suit the appellant challenged the order of transfer from Nalanda Medical College and Hospital, Patna to Ranchi Medical College and Hospital, Ranchi. In the said suit one of the issues before the Civil Court was as to whether the order of promotion is still continuing. By judgment and decree dated 10-9-93 the Civil Court held that "on the basis of materials available on record I came to the conclusion and hold that the plaintiff was Personal Assistant to Superintendent, Nalanda Medical College and Hospital, Patna on the date of institution of the suit". The suit was institution in the year 1986 and the order dated 1-9-1988 by which the appellant's promotion stood cancelled, was not under adjudication. Hence the finding recorded by the Civil Court that the appellant was Personal Assistant to Superintendent, Nalanda Medical College on the date of institution of the suit shall not enure to his benefit. Not only this, the Civil Court had gone into this question as an incidental issue because in the said suit the validity of the order of transfer was under challenge and not the order of appointment as Personal Assistant or its cancellation.

7. We are further of the opinion that the judgment of the Full Bench of this

Court, dated 20th December, 1989 in C.W.J.C. No. 8857/89 also does not in any way support the case of the appellant. True it is that in the said case, this Court directed that the appellant will continue, as Personal Assistant to the Superintendent, Nalanda Medical College and Hospital, Patna but this direction was given, in view of the order of injunction passed by the Civil Court in the Suit referred to above. Direction of this Court has to be read in the context it was given. Said judgment has not adjudicated the status of the appellant.

8. For the reasons stated above we respectfully agrees with the conclusion arrived at by the learned Single Judge that the appellant does not hold the substantive post of Personal Assistant.

9. It is well-settled that transfer is an incident of service and this Court interferes with the order of transfer, only when the same is either mala fide or in breach of any mandatory Rule. We do not find nor the order of transfer is assailed on any of these grounds,

10. In the result, we do not find any merit in this appeal and it is dismissed.