

(1996) 05 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 3952/96

Antu Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 05 PAT CK 0049

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ambar Nath Banerjee and Sanjeet Kumar, for the Appellant; V.N. Sinha, for State, for the Respondent

Judgement

Radha Mohan Prasad, J.—In this writ application the Petitioners have challenged the validity of the orders contained in Annexure-2 and the consequential order issued by the Executive Engineer contained in Annexure-1 whereby and whereunder their services are being sought to be returned back to their so called parent department namely, the Bihar State Construction Corporation Limited (thereinafter referred to as the Corporation").

2. In short the relevant facts are that initially all the Petitioners were appointed as driver in the Corporation on daily wages in the year 1978. The services of the Petitioners No. 1, 2 and 4 were regularised in the Corporation vide order dated 21.10.82 (Annexure-4) Later, as per policy decision of the State Government the services of the Petitioners No. 1, 2 and 4 alongwith vehicles were transferred to the Irrigation Department of the State Government in its workcharge establishment on 27.1.85, 16.7.86 and 9.5.87 and their services were absorbed in the Irrigation Department vide orders Contained in Annexures-3, 10 and 16 respectively. In so far the Petitioner No. 3 is concerned he came to the Irrigation Department by his posting in the said Department from the Corporation vide order dated 22.4.88 contained in Annexure-11. All the Petitioners have continued in the Irrigation Department for about 10 years or more whereafter by the

impugned orders their services are being sought to be returned back to their so called parent department i.e. the Corporation.

3. It is stated by the learned Govt. Pleader No. 9 that a counter affidavit was filed on behalf of the Respondent on 30.4.96 which, however, is not on the record. Learned State counsel has produced a copy of the said counter affidavit, which is being kept on the record of this case and the office is directed to trace out the said counter affidavit and bring it on the record.

4. Learned G.P. No. 9 while referring to the said counter affidavit has submitted that the impugned orders have been passed keeping in view the larger interest of the employees working in the Corporation who were senior to the Petitioner but were left out and not brought in the service of the Irrigation Department whereas the services of these Petitioners were brought in the Irrigation Department through back door method in violation of the rules and governmental decision. However, he has not been able to refer to any rule relating to such transfer of services from the Corporation to the State Government except the Government circular dated 21st July, 1975 which is contained in Annexure-A. It was submitted by him that vide Annexure-A there was a complete ban put by the State Government on further appointment of work charge staff or M.R. Staff in any of the project in the State. It was submitted by him that the transfer of the services of these Petitioners made in between in the year 1986 to 1987 in workcharge establishment under the State Government from the Corporation was in complete violation of the said governmental instruction.

5. From perusal of Annexure-A it appears that a desire was expressed by the then Chief Minister that no further appointment of work charged staff and M.R. staff in any of the project in the State be made and all further requirements of staff should be met by the distribution of existing, surplus work charged staff, employed in various projects of the State. The Minister concerned were invited to make recommendation in regard to it. Further it was directed that the Finance Department be made aware with it. However, no final decision has been produced on behalf of the State.

6. I fail to appreciate the plea taken on behalf of the Respondents to return back the service of these Petitioners to the so called parent department, namely, the Corporation. It is not disputed that their services were brought in the Irrigation Department under the orders of the competent authority and later their services were absorbed in the department by the competent authority. Now after having taken work for ten or more years their services are being sought to be returned back to the so called parent department i.e. the Corporation. Once the services of the Petitioners No. 1, 2 and 4 have been finally absorbed there cannot be any question of returning back their services to the Corporation without their consent.

7. It was submitted by the learned G.P. No. 9 that the services of the surplus staff in the Corporation will be again considered and the cases of all including these Petitioners would be considered for transfer of their services under the

State Government keeping in view their respective seniority.

8. I am unable to appreciate this approach of the Respondent. After the Petitioner have continued in the services of the State Government for ten or more long years, their services are being sought to be returned back although the State Govt, intends to transfer the services of the surplus staff of the Corporation under it. I find it to be strange that the attempt of the Respondent is to snatch bread from the mouth of these Petitioners and put the same in the mouth of others, that too when they have continued in the Irrigation Department for ten of more long years. In my opinion, in the absence of any rule for deputation/transfer of the ser-vices of the employees of the Corporation under the State Government according to seniority the impugned action is arbitrary and in violation of Article 14 of the Constitution of India. If other so called senior persons were aggrieved by the transfer of the services of these Petitioners from the Corporation to the Irrigation Department they could have challenged the validity of the same soon thereafter or within a reasonable time. But that having not been done, in my opinion, on the aforementioned plea taken on behalf of the State the services of these Petitioners cannot be returned back to the so called parent department, particularly after such a long time and in view of the fact that the services of the Petitioners No. 1, 2 and 4 have been absorbed in the irrigation Department, Now, the parent Department of the Petitioners is the Irrigation Department and not the Corporation.

9. Accordingly, the impugned orders in so far as it relates to the present Petitioners cannot be sustained and they are quashed.