
(1986) 01 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 151 of 1986

Arbind Prasad Sinha

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 23-01-1986

Acts Referred:

Bihar Lokayukta Act, 1973 — Section 2, 5

Citation : (1986) PLJR 338

Hon'ble Judges : M. P. Varma, J;H. L. Agrawal, J

Bench : Division Bench

Advocate : Ganga Prasad Roy and Ram Bihari Thakur, for the Appellant; R. B. Mahto, A. G, for the Respondent

Final Decision : Allowed

Judgement

Hari Lai Agrawal, J.—The petitioner has filed this application challenging the validity of the order, contained in Annexure 1, granting extension to respondent no. 6 Shri Visheshwar Nath Mehrotra, as the Secretary of the Bihar Vidhan Sabha, after the date of his superannuation. The main ground of challenge to the impugned order is that no extension could have been granted to respondent no. 6 after the date of his superannuation. Respondent no. 6, who was a member of the Bihar Superior Judicial Service, having been appointed to the post of the Secretary of the Bihar Vidhan Sabha, joined as such in the first week of June, 1985 and superannuated in due course on 30.11.1985, without any extension of service in his parent department. But the Speaker of the Vidhan Sabha, (respondent no. 2,) granted him extension for six months and in pursuance thereof, the Government issued the impugned letter under the signature of the Joint Secretary, Department of Personnel and Administrative Reforms, respondent no. 4, allowing respondent no. 6 to continue in his post in anticipation of the concurrence of this Court, as his successor had not been selected so far.

2. Learned counsel for both the parties were heard in full so as to dispose of this

application at the admission stage itself and the application is accordingly being disposed of herewith with their consent.

3. Reference in this connection may be made to the relevant rule, i. e., rule 6(a) of the Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1984. This rule reads as follows :

6. Appointing Authority.-(a) The appointment to the post of Secretary or Joint Secretary shall be made by the Governor in consultation with the Speaker from amongst persons serving in the Bihar Superior Judicial Service.

(b) xx xx xx

On the basis of this rule it was contended on behalf of the petitioner that appointment to the post of Secretary or Joint Secretary to the Vidhan Sabha has to be made by the Governor from amongst the persons of the Bihar Superior Judicial Service who must be a "serving" member of the said Service, and pursuing the matter further it was contended that he must continue to be a "serving" member for holding the post of the Secretary or Joint Secretary, as the case may be.

4. On the other hand, the learned Advocate General appearing on behalf of the State submitted that the condition that the incumbent should be a "serving" member of the Service was required only at the time of making of the appointment and there was no bar for continuance in office of the said officer once he was appointed, even if he ceased to be a Member of the Judicial Service in question

5. The argument of the learned Advocate General in the first instance appeared to be attractive, but giving a closer thought to the submission, I find it difficult to accept the same. Before, however, I proceed to discuss the question further, I propose to consider the provisions for appointment and filling up of some other offices which may provide some assistance for answering the question.

6. I would first deal with the provisions of the Bihar Lokayukta Act, 1973 (Bihar Act VI of 1974). The Lokayukta has to be appointed after consultation with the Chief Justice of this Court and the leader of the opposition in the State Legislative Assembly. Section 5 provides the term of office and other service conditions of the Lokayukta and according to subsection (1) of section 5 "a person appointed as the Lokayukta shall hold office for a term of five years from the date on which he enters upon his office". Sub-section (2) of section 5 of this Act is very relevant for the present purpose and it reads as follows :

(2) On ceasing to hold office, the Lokayukta shall be ineligible for further employment (whether as the Lokayukta or in any other capacity) under the State Government, or for any employment under an office in, any such/local authority, Corporation Government Company or Society as is referred to in sub-clause (iii) of clause (j) of section 2.

7. The other relevant provisions would be in the Bihar Administrative Tribunal Act, 1981. According to section 3 of this Act the Tribunal is to consist of a Chairman and at least two other Members. The Chairman is to be a person who should be a Judge of the High Court or would be otherwise eligible for being appointed as such. Section 4 lays down the term of office of the Chairman and its Members and prescribes a period of three years from the date of assumption of the charge, but no Member including the Chairman can continue in office after attaining the age of 65 years.

8. Similarly, in the Central Act, namely, the Administrative Tribunal Act, 1985 (No. 13 of 1985), provision has been made regarding the term of office of the Chairman of the Tribunal. According to section 8, the Chairman and the Vice-Chairman are to hold office as such for a term of five years from the date on which they enter upon their office or until they attain the age of 65 years.

9. I will now consider the aforesaid rule, 6(a) in the background of the provisions of the above analogous statutes dealing with the appointments and terms of different authorities to various offices, drawn from the Judicial Service or the Judiciary. On examining those provisions it would appear that the term of office is either for a prescribed tenure or it expires on the incumbent reaching a particular age. It is, therefore, obvious that the period of appointment in every case is invariably fixed so much so that in the Lokayukta Act it has been specifically provided for no further employment of the Lokayukta on his ceasing to hold the office.

10. The Secretary or the Joint Secretary of the Vidhan Sabha at the time of his initial appointment must be a Member of the Bihar Superior Judicial Service and he must continue to be a "serving" member till he holds the said office. The expression "serving" has been used in present continuous tense in rule 6(a) of the Rules and, in my considered opinion, this provides the key for the view that I propose to take that the officer to be appointed under rule 6(a) can hold the office only for the period he continues to be the "serving" member of the Bihar Superior Judicial Service and on his superannuation or otherwise, he cannot continue on the post.

11. Since the term of the office of respondent no. 6 came to an end on the 30th of November, 1985, obviously his appointment which was made under notification No. 482 dated the 21st June, 1985, also came to an end. It appears that the Secretariat of the Bihar Vidhan Sabha issued Notification No. 1115 on the 30th November, 1985 itself extending the term of appointment of respondent no. 6 till the 31st of May, 1986. This notification, for all practical purposes, must be held to be a fresh appointment and, even if it is taken to be an extension simpliciter of the term of the appointment of respondent no. 6, for the view that I have taken, it cannot be sustained in law. I would accordingly hold that the extension of the period of the appointment of respondent no. 6 by the Government, in the circumstances mentioned above, is illegal and must be quashed.

12. The application is accordingly allowed and the order of extension in favour of respondent no. 6 to the post of secretary of the Bihar Vidhan Sabha, contained in Annexure 1, is hereby quashed. In the circumstances, however, I shall make no order as to costs.

13. M. P. Varma, J.-Rule of the Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1964 makes it obligatory that appointment to the post of Secretary or the Joint Secretary is to be made from among the persons serving in the Bihar Superior Judicial Service, Therefore, there can be no denial that no such appointment can be done without the effective consultation with the High Court. It can not be disputed that the tenure of service as a Judicial Officer of respondent no. 6 came to an end on the 30th of November, 1985. Therefore the action taken for the extension of his service, which, in shape and substance is a fresh appointment, amounts to an attempt to whittle down the authority vested in the High Court in this regard. Prior consultation of the High Court in making the appointment is a must, which can never be ignored. My learned Brother, in his erudite judgment, which I have the pleasure to read, has discussed every aspect of the case in full detail. I entirely agree with him that the moment respondent no. 6 ceases to be a Judicial Officer after superannuation, he loses his right to continue on the post. The application therefore, succeeds and the orders contained in annexure "1" has been rightly quashed.