

(2005) 06 PAT CK 0023
In the Patna High Court
Case No : LPA No. 311 of 2005

Arun Kumar Srivastava and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-06-2005

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Rule 49, 49A, 66

Citation : (2005) 2 BLJR 1508

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : R.B. Mahto and A.B. Ojha, for the Appellant; R.P. Singh, for Private respondents and Tej Bahadur Singh, SC 2, for the Respondent

Judgement

1. This appeal is directed against the order dated 16/3/2005 passed by the learned single judge dismissing the writ application filed by the petitioner-appellants challenging the order dated 22.5.2004 contained in Annexure-1. By the said Annexure the petitioners-appellants as well as intervenors-private respondents have been transferred and posted as Drug Inspector-cum- Licencing authority.

2. The only grievance which has been made on behalf of the appellants is that under the terms of the provision of the Drugs and Cosmetic Act, 1940 read with relevant Rules and Forms, the Drug Inspector and the Licencing Authority are two different posts and in some cases the Drug Inspector has to submit a report to the Licencing Authority for taking action and as such the vesting of two powers in the same person is not permissible under the provision of the Act and the Rules.

3. Learned counsel appearing for the State and the intervenors - respondents on the other hand submitted that there is no classification of duty between the Drug Inspector and the Licencing Authority. The power of both the posts can be vested in the same person. It is also stated that there is shortage of Drug Inspectors in the State of Bihar.

4. As stated above, by the impugned order the appellants as well as the private respondents both have been transferred and posted on two posts.

5. The only point for consideration is as to whether the law permits that both the function i.e. of the Drug Inspector and the Licencing Authority should be exercised by the same person.

6. The learned counsel appearing for the appellants drew our attention to the provisions contained under Part VI of the Rules and the Form - 35. From perusal of the same it appears that the Drug Inspector has to inspect the premises of the licensee and in case he finds any violation of the Act and the rule he has to submit a report to the Licencing Authority as under Rule 66 the power of cancellation of licence is vested with him and in terms of the provision of the provision of the Act and the Rules, the Licencing Authority has some time to rely upon the report of the Drug Inspector.

7. In that view of the matter, we find force in the submission raised on behalf of the appellants that the appellants and the private respondents cannot be posted on two posts at the same time to exercise the power of Drug Inspector as well as the Licencing Authority.

8. Rule 49 contains about the qualification of the Drug Inspector and Rule 49A about the qualification of Licensing Authority. The qualification for both the posts is more or less same. However, in case of Licensing Authority, there is need of experience of five years in the manufacture or testing of drugs or enforcement of the provisions of the Act. Thus, a Drug Inspector, who has experience of five years as mentioned in Rule 49A can be appointed as a Licensing Authority.

9. To avoid any confusion, we are of the view that the Government should post the Durg Inspectors and the Licencing Authorities separately on the basis of their qualification and experience and other criteria as is determined by the State Government.

10. During the course of arguments learned counsel for the State Mr. Tej Bahadur Singh, SC 2, submits that the State Government is conscious of the problem and is taking steps to formulate a policy/rule so that the Drug Inspectors and the Licensing Authorities are posted separately to discharge their duties. If it is so then the decision in the matter be taken within two months from the date of receipt/production of a copy of this order.

With the aforesaid observation, this application stands disposed of.