

(2005) 03 PAT CK 0024
In the Patna High Court
Case No : CWJC No. 6554 of 2004

Arun Kumar Srivastava and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Citation : (2005) 2 PLJR 718

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : A.B. Ojha, Ganesh Pd. Singh, for the Appellant; A.P. Jittu, Rajendra Pd. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties including Learned Counsel for the intervenors who have been allowed to be treated as petitioners. This writ application is directed against the notification issued by the State Government vide memo No. 552(15) dated 22.5.2004 as contained in Annexure 1 whereby and whereunder the petitioners vis a vis the intervenors have been transferred and posted at the respective places as Drug Inspectors-cum-Licencing Authority.

2. Amidst hearing of this application, an interlocutory application was filed on behalf of the petitioners vide I.A. No. 3896 of 2004 praying therein to delete the name of petitioner No. 3 Madan Mohan Prasad.

3. Having heard counsel for the parties on I.A. aforesaid, let the name of petitioner No. 3 be deleted from the array of the petitioners.

4. Besides challenge made by the writ petitioners, intervention application vide I.A. No. 2911 of 2004 was filed treating those intervenors as petitioners as they were similarly situated to the writ petitioners and were having common grievances. I.A. No. 2911 of 2004 was allowed which had formed part of the writ application. The intervenor-petitioners are raising objection and grievance with respect to conferring power of licencing authority upon the private respondents

who had also applied for being allowed to party respondents.

5. From Annexure 1, the notification issued by the State Government, it appears that altogether 25 Drug Inspectors and Licencing Authorities have been transferred and posted in the places indicated in the notifications as Licencing Authorities. The petitioners, intervenor-petitioners and intervenor-respondents are all Drug Inspectors and most of them have been transferred as Drug Inspectors-cum-Licencing Authorities.

6. The writ petitioners and the intervenors who have joined hands with the petitioners, have attempted to challenge the impugned notification on the ground that the entire structure of Bihar State Drug Control Service is being changed and they are reduced to the lowest post of the said service. It is contended by Learned Counsel that the impugned notification has been issued by the Establishment Committee but the power of transfer and posting has been vested in the State Government and, therefore, the entire exercise made by the Establishment Committee is wholly without jurisdiction. It is further submitted by Learned Counsel that the writ petitioners and the intervenors are fairly senior Drug Inspectors as they were appointed in the years 1975 and 1988 but the juniors to them have been made Regional Licencing Authorities and that also by the Establishment Committee and not by the competent authority. It is also submitted that the matter was never submitted for consideration before the Council of Ministers rather it was formally placed before the Minister concerned and, therefore, the entire exercise made by the Establishment Committee as contained in Annexure 1 must be held to be wholly without jurisdiction.

7. Different sets of counter affidavits have been filed on behalf of the State respondents and respondent-intervenor Stating therein that the post of Regional Licencing Authority is not a sanctioned post and in exercise of powers as envisaged under Rule 59(1) of The Drugs and Cosmetics Rules, 1945 (hereinafter referred to as Rules), some of the Drugs Inspectors in their own basic pay scale of Rs. 6500-10500 have been empowered to work as Licencing Authority by the State Government and commonly they are known as Regional Licencing Authority and as such it would be incorrect to say that the post of Regional Licencing Authority is superior post and supervisory in nature as they are drawing the same scale and they are all Class II officers in the cadre.

8. Learned Counsel for the intervenor respondents and state therefore submitted that the petitioners have not made out a case of discrimination as the petitioners vis a vis the intervenors are similarly situated as they all are Drug Inspectors and they have been transferred as Licencing Authorities in their own pay scale and therefore, the writ application is liable to be dismissed.

9. It appears from the materials on record that prior to issuance of notification dated 16.7.1994 as contained in Annexure 4 the Civil Surgeon-cum-Chief Medical Officer of the districts were vested with the powers of Licencing Authority. However, grievances were raised by the Indian Pharmacy Graduates Association

and others before this Court in C.W.J.C. No. 7413 of 1992 praying therein for issuance of mandamus to the respondents to appoint licencing authority and controlling authority under the provisions of Drugs and Cosmetics Act and Rules. The writ application aforesaid was heard and disposed of on 14.7.1994 by a Bench of this Court directing the State authorities to take necessary steps to comply with the requirements as envisaged under rules 49A and 50A of the Rules within a period of four months from the date of the order. Pursuant to the order passed by this Court as referred to above, the State Government issued notification dated 16.7.1994 as contained in Annexure 3, divesting the power of the Civil Surgeon-cum-Chief Medical Officer as envisaged under Rule 49A of the Rules and vested the powers of Licencing Authorities to the eligible Drug Inspectors and proper postings were given as Regional Licencing Authority.

10. Rule 49 of the Rules lays down the qualification of Inspectors whereas Rule 49A prescribe the qualification of a Licencing Authority. The qualifications of Drug Inspectors and that of Licencing Authority are similar. Rule 50 of the Rules envisages that all Inspectors appointed by the Central Government shall be under the control of an officer appointed in this behalf by the Central Government. Sub-rule (2) of Rule 50 of the Rules envisages that all Inspectors appointed by the State Government shall be under the control of an officer appointed in this behalf by the State Government whereas Sub-Rule (3) of Rule 50 postulates that an officer appointed by the Central Government under sub-rule (1), or as the case may be, an officer appointed by the State Government under sub-rule (2) shall be a controlling authority.

11. On plain reading of Rules 49, 49A and 50, it is manifestly clear that the Drug Inspectors in no way Would be under the control of the Licencing Authority or the Regional Licencing Authority rather it appears that the rank of Drug Inspector and that of the Licencing Authority is one and the same. The State Government in exercise of its power under rule 59(1) of the Rules thus has issued the impugned notification appointing licencing authority for the specified area.

12. Thus, the apprehension of the writ petitioners and the intervenor-petitioners that they would be answerable to their juniors who have been posted as Regional Licencing Authority is wholly misconceived.

13. From the impugned notification, it appears that twenty five officers of the rank of Drug Inspectors have been empowered to discharge the duties of Licencing Authorities in specified areas according to the provisions of rule 59(1) of the Rules and they are in the same pay scale. It also appears from the materials on record that post of licencing authorities are not the sanctioned posts and the notification as contained in Annexure 4 dated 16.7.1994 has been issued as per decision taken by the Minister Incharge on the recommendation of the Establishment Committee. It further appears from the pleadings of the parties that there is no cadre post of Regional Licencing Authority and the Licencing Authority and no scale has been prescribed nor these posts were ever advertised rather the writ petitioners, intervenor-petitioners and the intervenor-respondents

alt are in the pay scale of Rs. 6500-10500 and the Drug Inspectors who had completed five years of services and had the requisite qualification of Licencing Authority, have been empowered to work as Licencing authority.

14. Having heard counsel for the parties and considered their respective submissions, it appears to me that the petitioners vis a vis the intervenor-petitioners do not have any clash of interest rather it appears that they have certain grievances with regard to specified areas under which they have been made Licencing Authority. Since the Drug. Inspectors who had qualifying tenures of five years of services as required under Rule 49A of the Rules, have been vested with the powers of Licencing Authority, the writ petitioners and the intervenor-petitioners cannot be allowed to raise a grievance on the ground of their seniority in the cadre of Drug Inspectors. I have already noticed above that all Drug Inspectors appointed by the State Government shall be under overall control of an officer appointed in this behalf by the State Government as required under Rule 50 of the Rules.

15. For the reasons aforementioned, therefore, it is held that the petitioners and intervenor-petitioners enjoy the same status and. power as that of the intervenor-respondents and in no way they are subordinate to the Regional Licencing Authority as all of them are in same revised basic scale of Class II service in the Government of Bihar.

16. In the result, I find no merit in this writ application which is accordingly dismissed. No costs.