
(2003) 01 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 8894 of 2002

Awadhesh Sharma and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Citation : (2003) 2 PLJR 393

Hon'ble Judges : Shashank Kumar Singh, J

Bench : Single Bench

Advocate : Indu Bhushan Singh, Sitesh Chandra Mishra, Dilip Kumar Sinha, in C.W.J.C. Nos. 8894 of 2002, Y.V. Giri, Bindhyachal Singh, Uday Pratap Singh, in C.W.J.C. No. 9078 of 2002, Naresh Kumar Malhotra, Rajiv Ranjan Kumar, Satya Prakash, in C.W.J.C. No. 8697 and 9113 of 2002 and Abhoy Kr. Singh, Naresh Kumar Malhotra, Binod Kr. Sinha and Satya Prakash, in C.W.J.C. No. 8539 of 2002, for the Appellant; R.K. Dutta, for State, for the Respondent

Judgement

Shashank Kumar Singh, J.—As in all these five writ applications, prayer of the Petitioners is same/similar and as such, these applications were made analogous and were heard together and with the consent of the parties are being disposed of by this common order at the time of admission itself.

2. All these writ Petitioners claim to be on deputation for absorption in different treasuries of the State, who were earlier employees of different Corporations/ Boards established under the Bureau of Public Enterprises and in all the five writ applications the prayers of the Petitioners are the same, i.e., relating to their being sent back to their parent department as their deputation was being proposed to be cancelled in view of the fact that there were some anomaly in the pay scale of the post which they were holding prior to being deputed, as Account Assistant in the Treasury and the actual pay scale being paid to the employees similarly situated in the Treasury.

3. Annexure-10 dated 24th February, 2001 in C.W.J.C No. 8894/2002 is a letter issued by the Finance Department by which certain persons who were on

deputation pursuant to Annexure-1 issued by the then Finance Secretary, were sought to be repatriated back to their parent department.

4. An argument has been made on behalf of the Petitioners that from a bare perusal of Annexures 1 and 2 of C.W.J.C. No. 8894/02 and similar Annexures in the other four writ applications, it would transpire that the said deputation was not a deputation in the ordinary sense of the word, but, the same was in view of a policy decision approved by the department including the Chief Minister of the State for the purpose of absorption of the persons, on deputation, if they were found fit for manning the job for which they had been selected, as some of the organisations/Corporations/Boards had become sick and/or in others they were become surplus.

5. It has further been contended by the learned Counsel for the Petitioners that in the Treasury offices where they were posted vacancies were there, which were not being filled up on regular basis and as such, it was decided that persons, who are duly qualified to man those posts, be only deputed so that if subsequently it is decided and they are found duly discharging their duties, they may even be absorbed. In this regard it has further been contended that names of the Petitioners and others were not only called for from their parent department, but a selection process was gone into in which stringent qualifications were laid down. It is further contended that though qualification for appointment of an account assistant is matriculate only, but it was decided that only those persons be called to undergo selection process, who are Graduate with at least five years experience and are not more than 45 years of age. All the persons, who were interviewed, were not selected rather only a few of them, who fulfilled the qualification and criteria, as stated above had been selected. As such, it is stated that the aforesaid deputation cannot be termed as a deputation giving no vested right to the deputationist, who can be repatriated any time.

6. It has further been argued that the Petitioners of these writ applications have also been discriminated against as from Annexures appended to the writ applications under consideration it would transpire that it has been accepted by the Finance Department that their repatriation to their parent department would result in suffering of work in the treasuries where they are posted at present, still a decision has been taken to repatriate a few of them, but, as far as others, who have been appointed along with the Petitioners are concerned, a decision has been taken to allow them to continue. Certain case laws have also been relied upon by the counsel for the Petitioners to substantiate their claim that their deputation is not a simple deputation and does not give any right to the deputationist, rather the same has been made in special circumstances for a different reason and when a deputation has been made differently for a different purpose the deputationists have a right too.

7. In reply to the aforesaid contention, learned Standing Counsel No. 4 has very fairly contended that the question of repatriation of the present writ Petitioners only arose due to their having demanded higher salary, in view of the

recommendation of the 6th Pay Revision Committee whereby their parent organisation has accepted the revised pay scale only for those of their employees, who were on deputation subject to its approval of the Board of Directors and Finance Department.

8. It has further been contended that the aforesaid approval has not been granted and by bringing Annexure-C in the supplementary counter-affidavit it has been stated that one of the aforesaid organisation being Bihar State Industrial Development Corporation has already recalled the earlier order granting the aforesaid benefit. As such, it has been contended that if benefits granted to the Petitioners in view of similar orders passed by their parent department are not demanded by the Petitioners, there is no question of repatriating the Petitioners to their parent department for the present. Only similar orders having been passed by the parent departments of the deputed employees giving them a higher pay scale were creating difficulty in allowing the Petitioners and other similarly situated persons to continue with the Treasury and in view of the same, the aforesaid order of repatriation has been passed.

9. Learned Counsel for the Petitioners also does not controvert the aforesaid contention rather it is contended that in view of Annexure-1 in C.W.J.C. No. 8894/2002 and other similar annexures in other writ applications, the Petitioners have been deputed along with their pay protection till new appointments are made or a decision is taken regarding their absorption on the post on which they are on deputation. It has further been contended that in view of the higher pay scale subject to recommendation of 6th Pay Revision Committee not being approved by the Finance Department and the Board of Directors, there was no question of their claiming the same.

10. The aforesaid contention has also not been controverted by the State, as the aforesaid letter safe-guards the interest of the Petitioners and similarly situated persons, who are required to be safe-guarded.

11. Learned Counsel for the Petitioners has also relied upon Annexure-15, the judgment of a Division Bench of this Court regarding earlier absorption relating to class-III and IV wherein it has been held that the State cannot adopt two standards. Learned Counsel for the State on the other hand has contended that at the aforesaid judgment relates to adopting different standards for absorption of class-III and IV employees and similar standards were directed to be adopted for absorption of class III and IV employees. From the facts of the aforesaid case one thing is clear that earlier also in cases of deputation, in the special circumstances, decision regarding absorbing their services at the place of deputation has been taken.

12. In view of the stand of the State and the Petitioners as discussed above, the order of repatriation, as contained in Annexure-10 in C.W.J.C. No. 8894/2002 and similar orders in other writ applications become redundant/infructuous and are not required to be given effect to, as it has clearly been stated by the

learned Counsel for the State that the same has only been done in view of the concerned parent department giving higher pay scale to the deputationist in view of the recommendation of the 6th Pay Revision Committee. As the aforesaid pay scale had been given, provided the same as approved by the Finance Department and as it has not been found favour with the Finance Department and has been withdrawn in one Corporation, there is no question of giving the aforesaid revised pay scale to the Petitioners after their deputation as treasury assistant and as it is contended by the State that Annexure-10 has only been passed in view of the said proposed revised pay scale the aforesaid order would be deemed to have not been passed and it shall not be given effect to.

13. The only question which remains to be decided, is as to whether the Petitioners are to be absorbed or not pursuant to a policy decision of the State Government as contained in Annexure-8 to C.W.J.C. No. 8359 (sic-8539 ?)/2002. This Court feels that the future of the Petitioners should not hang in balance and a final decision has to be taken at the earliest, though the learned Counsel for the State has stated that these are only notings in the file. True, it may be so, but it appears from the noting that the same has nearly attained finality as the proposal has finally been approved by the Chief Minister. As such, this Court directs the Respondents-authorities of the Finance Department and other concerned Respondents to take an appropriate decision in accordance with law at the earliest.

14. In view of the facts and circumstances as narrated above, as the grievance of the Petitioners has already been mitigated no further order is required to be passed and interim order, if any, will merge with the final order.

15. It is further made clear that any person, who has been relieved in view of Annexure-10 and other similar orders in other writ applications under consideration during the pendency of these writ applications in spite of passing of the interim order they shall automatically stand restored back to their place of deputation, as if the order of repatriation has not been given effect to.

16. These writ applications, thus, stand disposed of.