
(2003) 11 PAT CK 0028
In the Patna High Court
Case No : CWJC No. 5174 of 2003

Braj Kishore Paswan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Citation : (2004) 1 BLJR 2 : (2004) 2 PLJR 406

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Ram Balak Mahto, A.N. Banerjee, for the Appellant; S.D. Yadav, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties and considered the counter affidavit for the respondents.

2. The petitioner challenges the orders, as contained in Annexures 1 and 2.

3. Vide order, as contained in Annexure 1, the petitioner is being repatriated to his parent place and vide order, as contained in Annexure 2 he was put under suspension pending a departmental inquiry. The order, as contained in Annexure 1, is being assailed on the ground that after coming into force of the Bihar Re-organisation Act, 2000 (hereinafter to be referred to as "Act"). The authorities of the State of Bihar in view of Section 72 of the Act had no jurisdiction to repatriate the petitioner to the District Police Force at Godda, which now falls in the State Jharkhand.

4. From Annexure 1, it appears that the petitioner was repatriated in the District of Godda in the State of Jharkhand vide order dated 22.5.2003, much after coming into force of the Act.

5. Ex facie, it appears that this power has been exercised by the State authority de hors the provisions laid down u/s 72 of the Act. Section 72 of the Act reads as

follows :--

"72. Provisions relating to services in Bihar and Jharkhand.--(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand :

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

6. There is nothing in the counter affidavit filed on behalf of the respondents to show that any decision in the matter has been taken, so far the petitioner is concerned, in consonance with Section 72 of the Act.

7. However, Mr. Yadav, learned Government Advocate concedes that the petitioner could have been sent to the Home Department of the State Bihar itself instead of repatriating him to a place in the State of Jharkhand.

8. The order, in this view of the matter, is held to be wholly without jurisdiction and not sustainable in law.

9. It is, accordingly, set aside.

10. So far the grievance of the petitioner pertaining to the order of suspension is concerned, learned counsel appearing on behalf of the petitioner submitted that the departmental inquiry was completed and the charges have not been proved against him, and, therefore, the petitioner should not continue under suspension any more.

11. On the other hand, it has been submitted by learned Government Advocate that the inquiry report ipso facto does not exonerate the petitioner from the charges and the same is not binding in nature upon the disciplinary authority, who may take a different view and hold the petitioner to be guilty of the charges.

12. From Annexure 2 itself, it appears that it is dated 19.11.2002 and the petitioner is continuing under suspension till date. Since the inquiry report has

been submitted and the petitioner is continuing under suspension, the disciplinary departmental proceeding should not be kept on hold for indefinite period.

13. Mr. Yadav, learned Government Advocate, however, submits that the disciplinary authority will take final decision in the matter within two months from today.

14. The authorities, accordingly, are directed to take a final decision in the departmental proceeding within two months from today, failing which the order of suspension shall stand automatically vacated.

15. With the directions/observations made above, this application is disposed of.