
(2001) 08 PAT CK 0129
In the Patna High Court
Case No : C.W.J.C. No. 1218 of 2001

Brarrnm Deo Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0129

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioner seeks quashing of an order by which his services have been placed at the disposal of the Rural Development Department. He is a member of the Bihar Administrative Service and at the relevant time he was posted as. Sub-divisional officer, Marhaura in the District of Saran.

2. The validity of the order has been challenged on the ground that the order is not that of the State Government. It has been contended that the Government orders are supposed to be expressed in the name of the Governor and authenticated in the manner laid down under Article 166 of the Constitution but in the instant case the order has been issued by the Additional Secretary of the Personnel and Administrative Reforms Department under a memorandum (GYAP) (wrongly described as GYATAVYA in the typed copy enclosed by the Petitioner as Annexure-1). In response to the stand of the Respondents that the order has been issued with the approval of the Chief Minister, it has been submitted that the Minister's order in the file is merely opinion and unless communicated in the manner prescribed i.e. in terms of Article 166, it cannot be treated as Government order. In support of the submissions reliance has been placed on Bachittar Singh v. State of Punjab AIR 1967 SC 395 State of Kerala Vs. Smt. A. Lakshmikutty and others, and State of Bihar and Others Vs. Kripalu Shankar and Others,

3. It may be mentioned that the Petitioner has been replaced by Virendra Pratap as Sub-divisional Officer, Marhaura, later added as Respondent No. 6 In this case. From perusal of the file of the Personnel Department which was produced

at the time of hearing, it appears that the cases of both the Petitioner and Respondent No. 6 were considered by the Department Establishment Committee in the same meeting on 10.1.2001. The Committee proposed posting of Respondent No. 6, then posted as Sub-divisional Officer, Triveniganj, as SDO, Marhaura while the services of the Petitioner was proposed to be handed over to the Rural Development Department for being posted as District Panchayat Raj Officer. The said proposal was finally approved by the Chief Minister on 18.1.2001. Four notifications were issued notifying the transfer and posting. Curiously in the case of the Petitioner and few other such notifications was captioned as "GYAP" while in respect of others, including Respondent No. 6, it was described as notifications. This was naturally highlighted by the counsel for the Petitioner in course of hearing as indicated above. However, I find little substance in the argument. The term "notification" has been defined u/s 4(36) of the Bihar General Clauses Act, 1917 to mean "a notification in the Gazette". It is not the case of the Petitioner that the impugned order has not been published in the official gazette of the State. That being the position, simply because the order has been described as "GYAP", that cannot take away, the legal character and effect of the order. It is well known that nomenclature is not conclusive of the substance of the thing. What is important is the power and the manner of exercise thereof.

4. The fact that the impugned order has not been issued in the name of the Governor of Bihar also does not affect its legal character. No doubt, the order of the Government is required to be expressed in the name of the President of India or, in the case of State in the name of the Governor. But, as explained by the Supreme Court in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, this merely gives an immunity to the order from being challenged on the ground that it is not an order by the Governor, this does not mean that where the order is not so expressed in the name of the Governor, it ceases to be a valid order. The court observed:

Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity.

The same view was expressed in the case of *The State of Bombay Vs. Purushottam Jog Naik*, and *Ghaio Mall and Sons Vs. The State of Delhi and Others*, In *R. Chitralekha and Another Vs. State of Mysore and Others*, the Supreme Court observed as under:

It is therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor.

5. As stated above, the original record of the Department reveals that the impugned order was in fact the order of the State Government and therefore

merely because it was not issued in the name of the Governor of Bihar, it does not cease to be a Government order. The case of *Bachittar Singh v. State of Punjab* supra relied upon by the counsel, is of no help to the Petitioner. In that case the order, though signed by the Revenue Minister, was not communicated to the party and therefore it was held that there was no effective order. In the instant case the order has been duly notified and therefore the ratio of the decision in *Bachittar Singh*'s case is not applicable.

6. In *State of Kerala v. A. Lakshmikutty* (supra) the facts of the case were that the Chief Minister at a press conference spoke about the decision of the Council of Ministers at the meeting held on the previous day regarding filling up the posts of District Judge. The statement of the Chief Minister was published in the newspapers. A question arose as to whether publication of the decision of the Council of Ministers in the newspapers amounted to Government order. In that context while rejecting the contention to that effect, the Court observed that whatever the Council of Ministers may say in regard to the particular matter it does not become action of the State Government till the advice of the Council of Ministers is accepted or deemed to be accepted by the head of the State. Before an advice of the Council of Ministers amounts to an order of the State Government, two requirements must be fulfilled namely, (1) the order of the State Government must be expressed in the name of the Governor as required by Article 166(1), and (2) it must be communicated to the person concerned. The court *inter alia* relied on *Bachittar Singh*'s case (supra). It would thus appear that the facts of the case were entirely different and the decision is of no help to the Petitioner in the instant case.

7. In *State of Bihar v. Kripalu Shankar* (supra), another case relied upon by the counsel for the Petitioner, the point for consideration was whether notings in the file against the Court order could be a ground to proceed in contempt. The decision was rendered on appeal by the State of Bihar against judgment of the High Court in a contempt proceeding holding the officers guilty of contempt as the opinion expressed by them in the file was at a tangent with the Court orders. The said decision too thus is of no avail to the Petitioner.

8. Counsel for the Petitioner also made a half hearted submission that the Petitioner has been shifted from Marhaura to accommodate Respondent No. 6. Coming as if deed pursuant to the deliberations by the Establishment Committee, in the absence of any cogent materials suggesting to the contrary, I find no substance in the submission which has been noticed simply to be rejected.

9. In the result, I do not find any merit in the writ petition which is accordingly dismissed.