
(2010) 07 PAT CK 0017
In the Patna High Court

Chaitali Majumdar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0017

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The petitioner was appointed as an Auxiliary Nurse Midwife (ANM) in Katihar district and she, as was required, was to be posted at Katihar. Some incident happened. The matter was reported to Director General, Health Services, Government of Bihar. The Director General, Health Services ordered an enquiry and pursuant thereto, on recommendation of the Civil Surgeon-cum-Chief Medical Officer, Katihar, by the impugned order, as contained in Annexure-6 dated 18.12.2009, the petitioner has been transferred from ANM School, Katihar and put at the disposal of Civil Surgeon-cum-Chief Medical Officer, Purnia. This is the order that is under challenge. Consequently, the consequential orders thereunder are also under challenge.

2. The principal issue that has been raised by the learned Counsel for the petitioner is that petitioner's appointment was in the Katihar District Cadre of ANM and, thus being a district cadre, she cannot be transferred to another district much less without her consent.

3. A counter affidavit has been filed on behalf of the Director General, Health Services, Bihar in which it is categorically stated in paragraph-11 that the post of ANM in Health Department is district cadre. Again, in paragraph-13 of the counter affidavit, it is stated that though it is district cadre, on administrative grounds, transfers have been affected. Thus, the stand of the State appears to be that notwithstanding the cadre of petitioner being district cadre, on

administrative grounds without her consent, her cadre could be changed by transfer orders. It is then stated that Director-in-Chief, Health Services, Government of Bihar is the final disciplinary authority and the Head of the Department in respect of non-gazetted employees and, therefore, he is competent authority to transfer the petitioner from one district to another district and the transfer has been approved by Government, as such, the transfer order, as impugned, cannot be said to be illegal.

4. On behalf of respondents, reliance has been placed on two decisions of this Court being in the case of Kameshwar Prasad Thakur and Ors. v. The State of Bihar and Ors. since reported in 1991 (2) PLJR 251, a Full Bench judgment of this Court dealing with Class-III and Class-IV employees of the Health Department of Government and in the case of The State of Bihar and Others Vs. Md. Zainuddin and Another, for the proposition that Class-III and Class-IV employees of the Health Department, Government of Bihar can be transferred from one district to another district on administrative grounds. I have perused both the judgments and I find that far from helping the respondents, they support the contention of the petitioner. In the case of Kameshwar Prasad Thakur and Ors. (supra), the Full Bench decision, a reference to paragraph-7 thereof would show that a contention was raised on behalf of petitioners that they belong to a separate district cadre which is formed in respect of each district. Their Lordships found "In our opinion, there is nothing before us to support the same. We are unable to find that such persons in a district form a separate cadre." As shown above, in the present case, the respondents themselves concede that petitioner is in a district cadre. That being so, the judgment in the said case does not apply and as a corollary, it can be said that it is otherwise.

5. Then I may refer to the case of State of Bihar and Ors. (supra) which is a Division Bench judgment and has been referred to in the counter affidavit as well. There, in paragraph-3, it is clearly noticed that it was conceded by both sides that respondents could be transferred from one district to another district on administrative grounds. That is the basis of that judgment which is not in the present case.

6. Thus found, on respondents' own admission, the cadre being district cadre, there could be no transfer from one district to another district which would have the effect of change of cadre of an employee without employees' request or consent. If that be so, then obviously, the transfer order, as passed by the Director General, Health Services, Government of Bihar, cannot be supported unless it is shown that the service conditions are otherwise which is not pleaded by the State.

7. In that view of the matter, Annexure-6 cannot be sustained and is quashed accordingly. All consequential orders, directions of handing over charge and reporting to Purnia district are also, accordingly, quashed. Petitioner would be deemed to be in continuous service without any break at her original place of posting within the district of Katihar.

8. It is only to be clarified that notwithstanding the judgment, the Civil Surgeon-cum-Chief Medical Officer, Katihar or for that matter, the Director General, Health Services, Government of Bihar does have the authority to transfer the petitioner within the district of Katihar to any other station.

9. The writ application is, thus, allowed.