
(1993) 07 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 4352 of 1992

Chandra Nath Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

Citation : (1993) 07 PAT CK 0003

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The Petitioners who are 64 in number have questioned an order dated 31-3-1992 issued by the Joint Secretary to the Government, Department of Agriculture, Government of Bihar (Respondent No. 6) and a direction by the Joint Director of Agriculture, Kosi Division, (Respondent No. 5) and as contained in Annexures-11 and 12 to the writ application whereby the Petitioners had been transferred outside Kosi Division. A special Agriculture Area Programme started in the year 1965 in Purnea and Saharsa Districts, temporarily for a period of one year. The said period had been extended from time to time.

2. According to the Petitioner, the Director of Agriculture, Bihar by letter dated 29-8-1978 directed creation of a unified cadre including the staff of Godown Keepers, Typists and Clerks as the cadre of Lower Division Clerks. The said order is contained in Annexure-3 to the writ application.

3. The Petitioners were allegedly promoted to the post of Upper Division Clerks. By a letter dated 7-7-1982 the Joint Secretary to the Government, Department of Agriculture sent a letter that the cadre of only ministerial and fourth Grade staff of Purnea and Katihar will remain separate from the cadre of Kosi Range as before. Thereafter another gradation list was published on 16-7-1985. Some of the Petitioners, thereafter were given (sic) bound promotion to the post of Junior Selection Grade Assistant.

4. However, the National Agriculture Extension project 91-92 was also started in Darbhanga under the auspices of World Bank. The Government had, however,

decided not to make direct appointment to the posts of the extended project and to fill up the said post by transfer and designate the posts mentioned therein. A copy of the said letter is contained in Annexure-11 to the writ application.

5. The Petitioners have been transferred to Darbhanga by reason of the said letter and pursuant thereto the Joint Director of Agriculture project, Executive Engineer were directed to transfer the Petitioners by a letter dated 28-4-1992.

6. It has been stated that those persons, who have been appointed after the Petitioners and are still working, have been retained whereas the Petitioners who are seniors have been transferred.

7. Mr. Anil Kumar, the learned Counsel appearing on behalf of the Petitioner has raised a short question in support of this application.

The learned Counsel submitted that the Petitioners belonging to the cadre cannot be transferred to another cadre without their consent.

It was further submitted that if the Petitioner are transferred to Darbhanga Division they were to lose their seniority.

8. It is true that normally employees cannot be transferred from one cadre to another cadre without their consent. However, by a letter dated 7th July, 1982 as contained in Annexure-5 to the writ application, it appears that the order was passed that the Joint Director shall, pass order for transfer inter alia in respect of the employees of the Purnea and Katihar. However, from a letter dated 31st March, 1982 which is contained in Annexure-11 to the writ application, it appears that the State of Bihar had sent a letter to the Accountant-General Bihar that the State Government had taken a policy decision to extend the Agriculture Extension Development for the year 1991-92 to the four districts of the Darbhanga division, which is a matter of policy decision for the State Government. The State of Bihar has also adopted a policy decision that for the said purpose no fresh appointment shall be made but the requisite posts should be filled up by transfer. The number of posts which are to be filled up by transfer have also been mentioned therein. Pursuant to the said order the Joint Director of Katihar Division had issued the impugned order as contained in Annexure-12.

9. The State in paragraph 8 of its counter-affidavit has stated that the scale of pay of both the Petitioners and village level workers are the same and the question of reduction of their rank by reason of the impugned order does not arise. It has further been stated that in view of the Policy Decision of the State of Bihar, the equivalent posts of non-plan are to be surrendered and the same would be filled by the adjustment by the administrative department from the incumbents of the surrendered posts. It has further been stated that a policy decision has also been adopted that in case of the surrender of posts of non-plan is not possible, the newly created posts would not be filled up.

Such a decision has been taken by the Adhikrit Samiti of the State Government which is the competent authority therefore and unless the decision of the said

Samiti is implemented, the entire Agricultural Extension Scheme would be put in jeopardy.

10. Learned Advocate General appearing on behalf of the State has further drawn our attention to Rule 56 of the Bihar Service Code and submitted that in terms of the said provisions also the State is empowered to transfer any person from one post to another. It has further been submitted that after the Scheme is over, the Petitioner may be permitted to join their old posts.

No rejoinder to the said counter-affidavit has been filed. There is nothing on the records to show that a permanent cadre had been created inasmuch as according to the Petitioners, this scheme was to be extended from year to year. However, in Annexure-1 to the writ application although the word "sthaikaran" has been mentioned, the same does not mean that a permanent cadre had been created.

11. This question however, need not detain us for a long time. The impugned orders admittedly were passed keeping in view a larger public interest. If the posts of the Petitioners had to be surrendered, the same would result in their dismissal and or retrenchment. Thus, if the State has adopted a policy decision that in relation to the workers of agricultural extension programme in Darbhanga Division, no new appointment shall be made but the posts shall be filled up from amongst the employees of another Division by way of transfer, the same cannot be said to be illegal or arbitrary. An appointment can also be made by way of transfer.

12. It is now well known that this Court normally does not interfere with the policy decision of the State unless it is found to be wholly unjust and violative of fundamental right of a citizen of India as enshrined in Article 14 of the Constitution of India.

13. Recently, the Supreme Court in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, , stated the law thus:

The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin as pointed out by this Court as far back as 1970 in A.K. Kraipak v. Union of India. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities, they have a certain amount of discretion available to them. They have a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred" (Lord Diplock in Secretary of

State for Education and Science v. Metropolitan Borough Counsel of Tamesside). The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene. To quote the classic passage from the judgment of Lord Green M.R. in Associated Provincial Picture House Ltd. v. Wednesbury Corporation.

It is true the discretion must be exercised reasonable. Now what does that mean? Lawyers familiar with the phraseology commonly used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must so to speak, direct himself properly in law. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

14. In this view of the matter, in our opinion, the policy decision of the State being not arbitrary and having been made to subserve public good no interference therewith is warranted.

Further it has been accepted by the State that by reason of the impugned orders as contained in Annexures-11 and 12 to the writ application, neither the Petitioners would loose monetarily nor their seniority would be affected.

As indicated hereinbefore even an offer had been made by learned Advocate General that upon completion of the Scheme in Darbhanga Division the Petitioners may return back to their original posts.

15. In this view of the matter, even assuming that the orders of transfer of the Petitioners are bad in law, the Petitioners could at least be deputed in terms of the provisions of the Bihar Service Code and/or would have been appointed by way of transfer.

16. Further it is well known that in a given case the High Court can decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution of India if substantial justice has been done to the parties.

17. It is also well known that a right of an individual sometimes has got to give way to the right of public at large.

In Suku Mahto and Another Vs. State of Bihar and Others , one of us (S.B. Sinha, J.) held as follows:

This court, it is now well settled, while exercising its jurisdiction under Article 226 of the Constitution of India may refuse to exercise its jurisdiction in a given case. In Joy Bharat Transport Co. and Anr. v. Central Coalfields Ltd. reported in 1988 BLR 192, I had held:

It is now well known that this Court does not interfere with in a given case only because it would be lawful to do so. The High Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India may refuse to issue writ in the event it is found that substantial justice has been done to the parties or in larger interest, it would not be prudent to issue a writ. It is also known that the right of an individual sometimes has got to give way to the right of the public at large. Under Article 226 of the Constitution of India, a High Court may refuse to exercise its jurisdiction in favour of a party who has not approached the Court with clean heads.

In that case reliance was placed upon the decision of the Supreme Court in the case of *Municipal Board Pratapgarh v. Mahendra Singh Chawla and Ors.* reported in 1982 (2) SCC 331 : 1982 UJ (SC), wherein it has been held as follows:

6. What are the options before us, Obviously as a logical corollary to our finding we have to interfere with the judgment of the High Court because the view taken by it is not in conformity with the law. It is at this stage that Mr. Sanghi, learned Counsel for the Respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and therefore this Court is not bound to tilt at every approach found not in consonance or conformity with law but the interference may have deleterious effect on the parties involved in this dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly rule of law must prevail but as is often said rule of law must run akin to rule of life. And life of law is not logic but experience.

A Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No. 12626 of 1987 in almost similar situation refused to grant relief to the Petitioner thereof stating the law thus:

Further more, the present is not a fit case where under Article 226 of the Constitution any relief could be granted it has been stated in the counter-affidavit that Rs. 50,00,000 would be suffered per day by the National Thermal Power Corporation Limited if the eucalyptus trees belonging to the Petitioner are not cut and line is not laid, as is planned by Respondent No. 2. As a result, the counter-affidavit further says, the supply of electricity to Lucknow, Moradabad and other districts would be hampered. As against the interest of the public at large the interest of the Petitioner cannot be given any consideration. The Petitioner had been asked by the letter dated 2-7-1987 by the Respondent No. 3 to be present at the time of cutting of the trees on July, 15-16, 1987 so that wood be removed by him. This can still be done. In our opinion, the present is not a case fit for granting of any of the reliefs prayed for.

18. In this view of the matter, in our opinion, it would not be appropriate to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India in the matter.

19. This application is, therefore, dismissed with the aforementioned observations but without any orders as to costs.

R.N. Prasad, J.

20. I agree.