
(2001) 10 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 782 of 2001

Dr. Brajesh Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-2001

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 74

Citation : (2002) 1 PLJR 34

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, for the Appellant; Sanjay Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This writ petition has been filed to notify the decision of the Establishment Committee in the matter of transfer and posting of the Petitioner. The facts are as follows.

2. The Petitioner was appointed as Assistant Professor, Humanities and posted in the Government Polytechnic at Gulzarbagh. Patna in 1968. On 8.9.87 he was promoted as Associate Professor. On his representation, by notification No. 203 dated 27.2.92, the promotion as Associate Professor was made effective from 1981. On the same day i.e. 27.2.92, by notification No. 204, he was given time-bound promotion as Professor by upgrading the post of Associate Professor held by him. By notification No. 1633 dated 4.9.95, in continuation of the earlier notification No. 204 dated 27.2.92, he was posted as Professor in BIT Sindri on the upgraded post. Pursuant to the said notification the Petitioner joined at BIT Sindri on 18.9.95 Where he is posted till date. The case of the Petitioner is that he belongs to the Polytechnic cadre and, therefore, could not be posted in BIT Sindri in the Engineering cadre, but under threat of being deprived of promotion he was forced to join at BIT Sindri. He made representation to repatriate him to his own cadre i.e. Polytechnic cadre. He filed writ petition. CWJC No. 8430/97,

for salary which had been stopped meanwhile by the Director, BIT Sindri, and for his transfer on repatriation. On 13.1.98 the writ petition was disposed of with liberty to the Petitioner to make representation and corresponding direction to the concerned Respondents to consider and dispose of the order of the same within two months. In the light of the order of this Court, on 19.1.98 he filed representation which did not bear any result. He then filed MJC No. 2135/98 for initiating contempt proceeding. During the pendency of the case, order was issued on 3.8.98 regarding payment of salary. In December 1998 the Establishment Committee considered his case for transfer and resolved to post him in the Teaching, Learning, Research Development Curriculum (TLRDC) at Patna which was also approved by the Minister but the decision was not notified. Finding no way out he filed the present writ petition seeking direction to implement the said decision of the Establishment Committee.

3. At the initial stage of hearing the grievance of the Petitioner appeared to be very simple and straight-all that the Petitioner seemed to seek was a direction to implement the decision of the Establishment Committee said to have been approved by the Minister Incharge. In the counter affidavit which the Science and Technology Department filed, stand was taken that consequent upon the division of the State under the Bihar Reorganisation Act, having regard to the place of posting of the Petitioner at BIT Sindri, now in the State of Jharkhand. The Government of Bihar has no jurisdiction to transfer him. In the circumstances, Government of Jharkhand has been requested by letter dated 181 dated 30.1.2001 to take appropriate decision in respect of the Petitioner in the light of the order of this Court in CWJC No. 8430/97 and MJC No. 2153/98. At this stage the Petitioner raised the dispute relating to cadre. According to him, no equivalent post in the Polytechnic cadre being available in the State of Jharkhand he cannot be compelled to remain in a "foreign service" at BIT Sindri. On the direction of the Court the Department filed supplementary counter affidavit sworn by the Joint Director (Administration), Science and Technology Department, followed by another affidavit sworn by the Secretary of the Department. At the end of the hearing of the case the Department also produced the relevant records. From perusal of the records and the counter affidavits, the following facts so far as relevant to this writ petition, emerge.

4. I will first state the facts relating to the Petitioner's transfer from BIT Sindri. From the relevant file bearing No. VI. Pra. (III) Astha-20/98 it appears that the Departmental Establishment Committee considered the cases of a large number of persons in the meetings held on 16.9.93, 19.9.98, 24.11.98 and 12.12.98. The case of the Petitioner was considered in the meeting held on 24.1.98. The Committee resolved to post him in the TLRDC at Patna. On 15.1.99 the Minister approved the proposal. As regards some of them he suggested modifications. Earlier, after his approval, certain transfers and postings, for which he was competent, had been notified on 29.12.98. The remaining proposals were to be placed before the Chief Minister for approval as the persons concerned were in higher scale of pay in respect to whom Chief Minister's approval was essential

under the Rules of Executive Business. But before the Chief Minister could pass, any order, the file was called back to the department, perhaps, because of imposition of the President's Rule in February 1999. On 5.3.99 another meeting of the Establishment Committee was held. The Petitioner was again proposed for posting in the TLRDC giving reference to the High Court's order. Thereafter the file kept shuttling between the Science and Technology Department, the Minister, the Chief Secretary and the Chief Minister's Secretariat. During this period several meetings of the Establishment Committee were held. The case of the Petitioner was always considered but the decisions of the Committee could not be notified. It is not necessary to set out the details in this regard. Finally, the Establishment Committee again met on 7.6.2000 and 8.6.2000. The case of the Petitioner was considered by the Committee in the meeting held on 8.6.2000, and he was again proposed for posting in TLRDC as Joint Director. On 30.6.2000 the Minister Incharge agreed with the proposal but, as circumstances would have it, the proposals of the Committee finalised in the meeting held on 7.6.2000 (kept at pages 60-58/C) alone were put up by the Chief Secretary before the Chief Minister on 5.8.2000 who approved the same on 29.8.2000. The proposals finalised by the Committee on 7.6.2000, including the one with respect to the Petitioner (kept at pages 73-71/C of the file) were not approved. In fact, they were not put up before the Chief Minister, perhaps, due to oversight. Be that as it may, in these circumstances, even though the Establishment Committee had all along proposed to post the Petitioner in TLRDC, the recommendation was never approved by the Chief Minister. In the meantime, on 15.11.2000 the division of the State of Bihar took place under the Bihar Reorganisation Act.

5. The point for consideration is whether the recommendation of the Establishment Committee can be given effect to by the Government of Bihar at this stage. Section 74 of the Reorganisation Act may be noticed in this regard, as under:

74. Provisions as to continuance of officers on the same post.- Every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on or from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority, in that successor State:

Provided that nothing in the section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting continuance in such post or office.

6. It is manifest that every person holding any post or discharging the duties of any post or office in connection with the affairs of the existing State, immediately before the appointed day i.e. on 14.11.2000 is to provisionally continue to remain on the same post or office in the same State subject to allotment to either of the two States i.e. divided State of Bihar or the State of Jharkhand.

Subject to any decision by the competent authority they are to be treated, on or from the appointed day, to have been duly appointed to the post or office by the Government of the successor State. The Petitioner, being posted as Professor at BIT Sindri and discharging the duties of that post, in connection with the affairs of the existing State, has thus to be treated as appointed to that post by the Government of Jharkhand State Subject to any decision by the competent authority in terms of Sections 72 or 74 of the Act. In the above view of the matter, it is not possible at this stage to direct the Respondents to notify the decision taken by the Establishment Committee on the file which must be held to have become inoperative. It is well settled that the decision or order in the file is no decision or order having binding effect in respect of which any mandamus can be issued for its implementation. Reference may be made to the well known decision in the case of *Bachittar Singh v. State of Punjab* AIR 1963 Supreme Court 395. It would be useful to notice the relevant observations from the decision as follows:

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over against and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

7. I do not find any substance in the other part of the grievance that posting in BIT Sindri was thrust upon him. From the records it appears that until 1979 the teaching posts in the Engineering Colleges and Polytechnics were treated at par in all respects. In fact there used to be common recruitment for both Engineering Colleges and Polytechnics. In 1979 the guidelines of the All India Council for Technical Education (AICTE) came into force which brought about drastic changes in the service conditions. The post structure also underwent change, unlike the Engineering Colleges, the corresponding post of Assistant Professor, Associate Professor and Professor were converted into posts of Lecturers, Readers and Principal. As circumstances would have it, the teachers of the Engineering Colleges had been allowed the benefit of time-bound promotion scheme available to the teachers of the Universities - from Assistant Professor to Associate Professor and from Associate Professor to Professor. The question arose as to whether the benefit of time bound promotion scheme should be extended to the teachers in the Polytechnics who had been appointed by common recruitment along with their counter-parts in the Engineering Colleges, because when the posts of Associate Professor and Professor did not exist in the Polytechnics how such time bound promotion to those posts could be given? The State Government took a policy decision that all teachers of Polytechnics appointed prior to 5.1.79 may be allowed the benefit of time bound promotion provided they fulfilled the requisite criteria for such promotion prior to 1.3.89. In order to facilitate such promotion they were to be posted in the Engineering Colleges by creating supernumerary posts in those colleges. It was in these circumstances

that by notification No. 204 dated 27.2.92 (supra), vide Annexure-3 to the writ petition, the Petitioner and others were granted time bound promotion as Professor. All that was done by notification No. 1633 dated 4.9.95 (in the case of Petitioner, similar notifications were issued in respect of others on the same day), was that the Petitioner was posted in BIT Sindri by upgrading the post held by him. From condition No. 4 of notification No. 204 dated 27.2.92 it is evident that time-bound promotion was given to the Petitioner, and others, on the condition that the same will be effective only after they join in the Engineering College on posting/deputation basis. Thus, if the Petitioner joined BIT Sindri pursuant to notification dated 4.9.95 he did so for his own benefit because otherwise he could not have been entitled to the benefit of time-bound promotion allowed to him by notification No. 204 dated 27.2.92. Condition No. 3 of the notification dated 27.2.92 made it further clear that the post would be treated as upgraded only till the incumbent remains on the post. If for any reason the post becomes vacant, it would revert to its original status. To the same effect is the language of notification No. 1633 dated 4.9.95. Thus, there can be no doubt that not only the posting of the Petitioner on the post of Professor in BIT Sindri but his continuation on the post was for his own advantage. Having taken the advantage he cannot turn around at this stage and make a grievance that the same was thrust on him without his consent. The notification dated 4.9.95 made it clear that if the person concerned did not join the post within 15 days the offer of time-bound promotion would stand withdrawn. In these premises, I do not find any substance in the grievance of the Petitioner relating to his posting in BIT Sindri. If the Petitioner now desires to revert to his parent cadre, at the cost of time-bound promotion, and/or allotment of Bihar State it is open to him to seek remedy before the concerned authorities. This Court, for the reasons stated above, cannot grant any relief to him in the present writ petition.

8. In the result, this writ petition is dismissed.