

(2003) 08 PAT CK 0079
In the Patna High Court
Case No : C.W.J.C. No. 1507 of 1999

Dr. Cosmos John

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Citation : (2003) 3 BLJR 1734 : (2003) 4 PLJR 101

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

Bench : Single Bench

Advocate : Shyam Narayan Sinha, Syed Khalil Hasan and Mangal Pandit, for the Appellant; R.P. Bhagat, GP IV, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The petitioner seeks quashing of the orders dated 24-4-1997 and 21-10-1998 by which his request to regularise the periods 1-8-1984 to 31-12-1986 and 1 -8-1979 to 4-7-1988 as part of his service, fix his pay and give him service benefits including second time bound promotion, accordingly, has been rejected.

2. Shorn of details, the petitioner was appointed as a Veterinary Assistant Surgeon in the Animal Husbandry Department of the State Government on 28-4-1959. During his tenure at Baghmara, district Dhanbad, as Veterinary Surgeon in 1979 he got a job offer as Veterinary Officer in the Republic of Zambia and applied for leave (wrongly described as deputation). The case of the petitioner is that his application was duly forwarded by the authorities and after "no objection" etc. he was relieved by the District Animal Husbandry Officer, Dhanbad on 31 -7-1979 for going to Zambia. The petitioner joined the assignment as Veterinary Officer at Ndola Dairy Farm on 1-9-1979. The case of the petitioner is that he applied for extension of the period through proper channel, namely, the Indian High Commission at Lusaka. As the authorities of the Ndola Dairy Farm wanted him to continue, they did not relieve him from the assignment. After the petitioner was finally relieved by the employer on

31-12-1986 he returned to India and submitted his joining report in the Directorate of Animal Husbandry on 12-1-1987 along with necessary certificates. The Animal Husbandry Department took advice from the Personnel and Administrative Reforms Department. The said Department took the view that under Rule 267(b) of the Bihar Service Code, in all transfers outside India the concurrence of the Government of India was essential and therefore, if the Finance Department agrees, post facto concurrence of the Government of India may be obtained. In anticipation of the decision of the Government of India the petitioner's joining was accepted on his giving undertaking that he would abide by the decision of the Government and the provisions of the Bihar Service Code on 5-7-1988. The Government of India however declined to concur in the proposal and in the circumstances the Finance Department withheld its consent leading to the impugned orders.

3. It is relevant to mention here that after the Government of India communicated its decision dated 11-10-1994, the petitioner had moved this Court in CWJC No. 9105/95 with a prayer to fix his salary taking into account the period of "foreign service" from 1-9-1979 to 31-12-1986. The petitioner thereafter filed representation which was rejected by the Government by the impugned order dated 24-4-1997. Another representation also went in vain with the passing of the second impugned order dated 21-10-1998.

4. The respondents have filed counter-affidavit denying the petitioner's claim. It has been stated that no order was ever issued by the Department with respect to "deputation" of the petitioner to "foreign service" in the Republic of Zambia. The petitioner was merely granted no objection certificate to enable him to obtain Passport for going abroad. In haste, without obtaining the government order he left for Zambia to accept the assignment there.

5. Though the respondents have denied the petitioner's claim it would appear from the brief resume of the petitioner's case, as noted above, that the Government had decided to accept the joining of the petitioner and accordingly posted him as Assistant Poultry Officer at Hotwar, district Ranchi on his giving undertaking that he would abide by the conditions to be fixed by the Government. Such acceptance was in anticipation of the post facto concurrence of the Government of India as mentioned above. It is only because the Government of India refused to accord such concurrence that the State Government declined to recognise the period in question as part of the petitioner's service. The basis of the respondent's case is a "note" appended to Rule 367(b) of the Bihar Service Code which runs as follows:

"The State Government have agreed to consult the Government of India, in cases of all transfers to foreign service outside India."

6. It is relevant to mention here that the note is part of rule which deals with "transfer" to foreign service. The present case does not appear to be a case of transfer to foreign service. Admittedly the petitioner had secured a job in the

Republic of Zambia on his own and the State Government does not appear to have played any role in the matter. The State Government came in the picture because the petitioner was employed in Government service and needed Government's permission. The permission for all practical purposes meant only "leave" so that his absence may not be unauthorised, it could not be treated as transfer or deputation. The note, therefore, strictly speaking does not appear to be applicable.

7. Another aspect of the case is that in terms of the "note", what is required is consultation with the Government of India and not its concurrence or consent. Such consultation apparently is a formality and cannot be contrary to the conditions other than those connected with the service conditions of the petitioner - touching upon the national security and such other things - an aspect which lost its relevance after petitioner's unblemished return to India. The entire case of the petitioner however appears to have been considered on the premise that consent/concurrence of the Government of India was essential without which the petitioner's period in question cannot be regularised as part of petitioner's service. The case of the petitioner in my opinion, is required to be considered from another angle - as to whether the period may be treated as one spent on leave including extraordinary leave, as admissible under different provisions of the Bihar Service Code, or otherwise, so that the petitioner is not deprived of the continuity of service and other service benefits.

8. It is to be kept in mind that no order to the contrary preventing the petitioner from going abroad, was passed by the authorities. In fact, it is apparent from the records that the authorities knew that the petitioner had a job offer in the Republic of Zambia and he intended to go there in connection with the said assignment. Having permitted him to go abroad, it would only be fit and appropriate to regularise his services for the aforesaid period as spent on leave or otherwise,

9. It is true that the petitioner had given an undertaking on 5-7-1988 to accept the terms and conditions as may be fixed by the State Government, but from the perusal of the joining report dated 5-7-1988 (Annexure 14), it is clear that he was not made aware of any such terms and condition. In any view the petitioner was virtually asked to sign on "dotted lines". Being an employee he had hardly any choice lest his joining would not have been accepted which would have put him to immense loss and prejudice.

10. In the above premises, the ground of rejection of the petitioner's claim being not relevant I am of the view that the petitioner is entitled to have his case reconsidered by the Government.

11. In the result, the petition is allowed and the impugned orders dated 24-4-1997 and 21-10-1998 contained in Annexures 19 and 20 of the writ petition are quashed with a direction to the Secretary, Animal Husbandry Department, to pass fresh order in the matter in accordance with law. This should be done

preferably within four months of receipt of a copy of this order.