
(2005) 07 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 7757 of 2005

Dr. Veena Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Citation : (2005) 4 PLJR 74

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

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Ashok Kumar Dubey, for the Appellant;
S.N. Pathak, Meena Singh and Rajesh Kumar Choudhary, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner is aggrieved by order dated 11.6.2005, by which she was transferred to the post of Civil Surgeon, Araria. The short fact of the case is that since 2003 the petitioner was posted at Lakhisarai as Civil Surgeon but by order dated 28.4.2005, which was a chain transfer, one Dr. Ganesh Kumar Srivastava, who was Deputy Superintendent of Gardanibagh Hospital, was transferred to the post of Civil Surgeon, Lakhisarai in place of the petitioner and the petitioner was not shown to be posted any where. Hence the petitioner joined in Headquarter on 2.5.2005, where her joining was accepted. She had also filed C.W.J.C. No. 6926/2005 in this Court for mandamus to post the petitioner as Regional Deputy Director or equivalent post as the persons junior to her were posted to such posts, which is a post higher than the post of Civil Surgeon. The said writ petition is pending. In the meantime the petitioner also filed a representation before the Commissioner-cum-Secretary, Health Department on 17.5.2005 for proper posting as per her seniority.

2. It is further stated by the learned counsel for the petitioner that thereafter vide impugned order dated 11.6.2005 (Annexure-8) the petitioner was posted as Civil Surgeon, Araria under Dr. Rajdhari Ranjan, who is Regional Deputy Director

of Health at Purnia, working since 28.4.2005. It is also pointed out that as per the gradation list the petitioner is much senior to the said Dr. Rajdhari Ranjan as she is at Serial No. 1763 having been appointed in the year 1973, whereas the latter is at Serial No. 3474 having been appointed in the year 1979. Thereafter on 23.6.2005 a letter was issued to the petitioner that if she does not join the post, action will be taken against her. Hence the only grievance of the petitioner is that she should not have been posted under a person, who is junior to her.

3. On the other hand, learned counsel for the State vehemently opposes the contention of the learned counsel for the petitioner and submits that during her posting as Additional Chief Medical Officer, Nawadah she absented herself from duty in an unauthorised manner for several months and only when she learnt that she was being posted as Civil Surgeon she joined and thereafter when she was posted as Civil Surgeon, Lakhisarai, she again absented herself in an unauthorised manner for more than two years and hence she has developed a habit to avoid duty and to remain in unauthorised absence. He further submits that in the said circumstances, Dr. Ganesh Kumar Srivastava was appointed as Civil Surgeon, Lakhisarai, on the approval of his Excellency the Governor and further due to her negligence and dereliction in duty she was asked to join in Headquarter and departmental proceeding was also initiated against her, which is pending. Furthermore, in paragraph 6 of the counter affidavit the respondents have stated that Dr. Rajdhari Ranjan belongs to Scheduled Caste category, while the petitioner belongs to General category, hence both of them cannot be compared. In the said circumstances, learned counsel for the State submits that the impugned order of transfer was genuine and without, any malafide. In this connection learned counsel for the State relies on several decisions of the Hon"ble Apex Court in the cases of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, , State of U.P. and Others Vs. Siya Ram and Another, , State of U.P. and Others Vs. Gobardhan Lal, and Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, . In the said decisions it has been held that in absence of malafide the transfer should not be interfered with as under the writ jurisdiction question of fact cannot be considered and that transfer to another post in the same category on account of inefficiency and misbehaviour cannot be interfered with on the ground of loss of seniority or promotional prospects. In the said circumstances, learned counsel for the respondents-State submits that there is no merit in this writ petition, which is fit to be dismissed.

4. After hearing the learned counsel for the parties and after perusal of the materials on record, it is quite apparent that the allegations levelled against the petitioner with regard to inefficiency and dereliction in duty have been refuted by the petitioner in her rejoinder and the said matter is under investigation in the departmental proceeding and hence no view should be expressed at this stage in the said matter. So far the pendency of C.W.J.C. No. 6926/2005 is concerned, it has been filed by the petitioner for giving her a post similar to the post which has already been given to her juniors. That matter can also not be considered in this

writ petition specially when the relief claimed by the petitioner in this writ petition is completely different to the said relief, as the only grievance of the petitioner in this case is that she has been posted under a person who is junior to her and she is ready to be transferred anywhere provided she is not humiliate by being posted under the person junior to her.

5. It is not in dispute that Dr. Rajdhari Ranjan was appointed much subsequently and was much junior to the petitioner even according to the gradation list. It is also not disputed that Dr. Rajdhari Ranjan was not given any promotion. Hence the contention, that since he belongs to Scheduled Caste category, whereas the petitioner belongs to General category, does not affect the petitioner's position as there is no reservation in calculating seniority.

6. In the aforesaid facts and circumstances of the case, there is no necessity to go into the question of facts with regard to the allegations and counter allegations made by the parties in the writ petition and there is also no question of digging out malafide against any single individual as from the admitted facts of the case it is quite apparent that the petitioner has been posted under a person, who is junior to her and till date no promotion has been given to him. In the said circumstances, I hereby set aside the impugned order of the authority concerned and direct him to post the petitioner in accordance with law anywhere under a person, who is not junior to her. With the aforesaid directions this writ petition is allowed.