
(1999) 06 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. 4649 of 1998

Dr. Vidyapati Roy

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-06-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 2 PLJR 662

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

Bench : Single Bench

Advocate : Ram Suresh Roy, Manoj Kumar and Abhay Kr. Roy, for the Appellant;
Azfar Hasan, for the Respondent

Judgement

S.N. Jha, J.—The dispute in this writ petition relates to transfer and posting of the Petitioner, a member of the Bihar Health Service. The petition is directed against the Health Department's notification No. 292(2) dated 28.5.98 so far as it relates to the Petitioner by which he has been posted as Medical Officer at Additional Primary Health Centre, Dhanawa, Barh in Patna District. An interim order of stay was passed on 1.7.98. On 2.12.98 while the writ petition was admitted for regular hearing, the interim order was directed to continue. On 21.12.98, at the instance of one Dr. Gyasuddin Rayee, vide I.A. No. 15370/98, the earlier interim order was modified with the clarification that the Petitioner may continue at Bihta where he was posted on 3.7.97 till further orders of this Court. Thereafter, on 15.4.99, another application (I.A. No. 5086/99) was filed by the State of Bihar for vacating the orders of stay.

2. The said interlocutory application came up for consideration on 12.5.99 and again on 21.5.99 when the matter was finally heard. Counsel for the parties agreed that although the writ petition has been admitted for hearing, they have no objection if the whole case is disposed of at this very stage. Accordingly, this order is being passed.

3. I have already indicated the nature of the dispute at the outset. The

background of the dispute is that by the Health Department's notification No. 340(2) dated 3.5.97 the Petitioner, who was then posted as Medical Officer, Additional Primary Health Centre, Navtol, District Begusarai, was transferred to Additional Primary Health Centre, Bagaha in the District of West Champaran. It may be mentioned here that in the writ petition the Petitioner has suppressed the fact that by the said notification he was transferred to Bagaha. He has also suppressed the fact that pursuant to the said transfer order on being relieved from his erstwhile post on 3.6.97, he joined the office of the Civil Surgeon-cum-Chief Medical Officer, West Champaran who directed him to submit his joining at the Additional Primary Health Centre, Bagaha where he had been posted. It is said that the Petitioner submitted his joining there on 9.6.97 in the meantime, by notification No. 52(2) dated 30.6.97. he was posted at Primary Health Centre, Sadar Block, Danapur, Patna. It may be mentioned here that in the said notification the Petitioner's present post was shown as Medical Officer, Additional Primary Health Centre, Navtol, Begusarai. In the light of the aforesaid notification dated 30.6.97 the Petitioner submitted his joining at Patna Civil Surgeon Office. According to the Respondent-State the Petitioner's joining at Patna was irregular because he did not submit his charge report with respect to the post of Medical Officer, Additional Primary Health Centre, Bagaha where he had already joined nor he had given any information to the controlling officer there to the effect that he was going to join at Danapur. Be that as it may, it is said that as the post of Medical Officer, PHC, Danapur was not vacant, the Civil Surgeon-cum-Chief Medical Officer Patna adjusted the Petitioner, by way of local arrangement at PHC, Bihta, District Patna vide his memo No. 3607 dated 3.7.97 in anticipation of Government approval. The grievance of the Petitioner is that by the impugned notification dated 28.5.98 a large number of such Doctors who had been likewise adjusted in their respective surgency by way of local arrangement, were regularised at the same place where they have been adjusted but the Petitioner was given a different treatment and instead of adjusting him at Bihata, he was posted at PHC Dhanawa (Barh).

4. The submission made in this regard found favour with this Court on 1.7.98 and an interim order of stay was passed as already stated above.

5. Mr. Azfar Hasan, learned Standing Counsel appearing for the State of Bihar submitted that the Petitioner was posted at PHC Danapur in mysterious circumstances. He pointed out that the relevant sheet containing the name and particulars of the Petitioner, meant for the Establishment" Committee does not contain the signature of any officer nor his case appears to have been dealt with by the committee, and it was merely on the basis of an endorsement of the clerk that the Petitioner was posted there. He produced the relevant file for perusal of the Court. Mr. Hasan also submitted that the Petitioner has himself signed the last pay certificate (LPC) which amounts to violation of the relevant rules.

6. Mr. Ram Suresh Roy, learned Counsel for the Petitioner highlighted that the Petitioner's son had been kidnapped during the tenure of his posting at Navtol,

Begusarai and therefore, his stay there was not secure. The Petitioner felt equally unsecure with his new posting at Bagha which too is notorious for kidnappings. He accordingly filed representation on which a fresh order of transfer was issued on 30.6.97. Mr. Roy has submitted that in the present writ petition the Petitioner is aggrieved by the discriminatory attitude of the Respondents in not regularising his posting at Bihta where he was adjusted by the Civil Surgeon-cum-Chief Medical Officer, Patna, unlike all other similar cases.

7. In my opinion, the Petitioner should have made representation against the impugned notification dated 28.5.98 rather than approached this Court. It is true that if the State or its functionaries make discrimination between two similarly situate persons, the persons feeling aggrieved by such act is entitled to approach this Court and it is the duty of the court to ensure that he is treated alike. Nevertheless in matters relating to transfer and posting the courts have limited jurisdiction. The court can interfere only if the transfer/posting is in violation of the statutory rules or is grossly arbitrary to the extent that it is violative of Article 14 of the Constitution, or it is malafide. But even in such cases it is ultimately the Government or other competent authority who has to pass the order. In other words, after striking down the impugned order the matter is to be sent back to the Government or the other competent authority for passing appropriate order.

8. So far as the grievance of the Petitioner arising from his posting at Dhanawa, Barh and not at Bihta where he was adjusted by the Civil-Surgeon-cum-Chief Medical Officer, Patna, is concerned, nothing has been stated by the State in the interlocutory application (I.A. No. 5086/97) which has, in fact, been filed for vacating the order of stay. The State, has also not filed any separate counter affidavit and therefore, this Court is not aware of the reasons why the Petitioner's adjustment at Bihta was not possible.

9. In my opinion, the Petitioner is entitled to file representation in respect of his grievance which the Government is bound to consider.

10. Adverting to other submission of Mr., Azfar Hasan that the Petitioner's transfer to Danapur was on the basis of an endorsement of a clerk, in the light of the recommendation of an MLA without any order of competent authority, it appears from page 102 of the Folder-File No. 3506 of the main file bearing No. 2/T2-2-241/97 that the Petitioner was earlier proposed to be posted at PHC, Govindpur-Nawadah, the particulars of the post to be placed has been scored out by a different ink and in its place, PHC, Sadar Prakhanda, Danapur, Patna has been written. It is interesting to find that one Dr. Abha Sinha was proposed to be posted vide page 111 of the said Folder-file at PHC Sadar Block Danapur, Patna but the same has also been scored out and in its place, PHC, Govindpur-Nawadah has been written. Thus original proposal for their posting was changed and while the Petitioner was ultimately posted at PHC, Sadar Block, Danapur, where Dr. Abha Sinha was originally proposed to be posted. She was posted at the Petitioner's place of posting. The circumstances in which the original

proposals have been scored out are no doubt, not clear. They also do not contain the signature of any person, whether an officer or an office clerk. I am however, unable to record any finding that the Petitioner's case was not dealt with by the Establishment Committee, in the absence of the main file in which the proposals might have been dealt with. The Folder-file consists of the names of the Doctors along with their particulars regarding the post and proposed posting and it appears that the proposal contained therein were approved by the Departmental Establishment Committee in its meeting held on 28.6.97, which were approved by the Minister Incharge with certain modifications on the next day. The file in this regard was put up before the Commissioner and Secretary of the Department (Shri B.K. Tripathi) whose initials appear on almost all the sheets. Whether the Petitioner was party to the alleged manipulation, if any or whether he committed any violation of relevant rules, by not making over charge of the post of the PHC, Bagaha or signing the LPC himself, may be matters for enquiry, which is the concern of the department. In the absence of any conclusive evidence that the Petitioner was party I do not wish to go into those aspects of the matter. The Petitioner is entitled to a post and salary of the post in accordance with the rules. Presently by virtue of the order of this Court he is continuing at PHC, Bihta. The appropriate course, in my opinion, would be to direct the Petitioner to make a representation before the Government without disturbing the status quo, for being allowed to remain at Bihta or being posted at any place, which the Government should consider on its merit. In the said representation, the Petitioner may also seek direction of the Government for payment of salary which presently appears to be held up on account of the intervening circumstances. It is expected the Government will look into the matter and take appropriate decision at the earliest. Till the order in this regard is issued, the Petitioner shall continue at PHC, Bihta.

11. The writ petition stands disposed of accordingly.