
(2002) 04 JH CK 0031

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1220 of 2002

Kamleshwar Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Citation : (2002) 04 JH CK 0031

Hon'ble Judges : Tapan Sen, J

Bench : Single Bench

Advocate : B.V. Kumar, Rajesh Kumar, for the Appellant; Pradip Modi, G.P.I. and A.K. Jha, for the Respondent

Judgement

Tapan Sen, J.—Heard the Parties.

2. In this writ application, the petitioner (Kamleshwar Prasad) has made a prayer *in alia* that he should be allowed to join on the post of circle officer. Ratu Anchal pursuant to Government Notification dated 31.12.2001 as contained at Annexure 1 and that the Respondent No. 3 should be directed to handover charge/of the post of circle officer. Ratu Anchal to the petitioner. He has also made a prayer for a direction that he should be allowed to draw salary from the date of his joining *w.e.f.* January. 2002.

3. The case of the petitioner in short is that after having been appointed on the post of Circle inspector on the recommendation of the BPSC he was transferred and posted at different places with consequential promotion, and lastly he was posted on the post of Assistant Settlement Officer at Hazaribagh.

4. By Notification dated 31.12-2001, the petitioner was transferred from Hazaribagh and was posted as Circle Officer at Ratu in the district of Ranchi while the Respondent No. 3, Birendra Kumar Singh was transferred from the post of Circle Officer, Ratu in the district of Ranchi and was transferred and posted as Circle Officer, Ormanjhi. The petitioner has stated that in compliance of aforementioned notification dated 31.12.2001, he submitted his joining before

the Respondent No. 2 (Deputy Commissioner, Ranchi) which was accepted w.e.f. 4.1.2002. Thereafter, the petitioner requested the Respondent No. 3 to handover charge to him but the said Respondent No. 3 refused to do so and did not allow the petitioner to assume charge. Thereafter the petitioner made an application on 15.1.2002 to the Respondent No. 2 for an order that he should be allowed to take over charge from the Respondent No. 3. Subsequently, by an order dated 31.1.2002 as contained at Annexure-3, the Respondent No. 2 ordered the Respondent No. 3 to hand over charge to the petitioner and proceed to join his transferred place. According to the petitioner, inspite of such specific order having been passed by the Deputy Commissioner, the Respondent No. 3 did not hand over charge to the petitioner. Subsequently, the petitioner filed an application on 8.2.2002 before the Respondent No. 2 requesting that he should be allowed to resume charge on the post of Circle Officer, Ratu. The grievance of the petitioner is that the Respondent No. 3 did not hand over charge nor has the Respondent No. 2 taken any action against the Respondent No. 3 and. therefore, the petitioner has been put in a very difficult situation i.e.. neither being allowed to function as an Assistant Settlement Officer. Hazaribagh nor as Circle Officer, Ratu in the district of Ranchi.

5. A counter affidavit has been filed in the instant case by the Respondent No. 2 which has been sworn by one Rama Kant Singh, Incharge Deputy Collector, Legal Section. According to deponent of the said counter affidavit he has stated that the petitioner was an Assistant Settlement Officer at Hazaribagh and was transferred and posted as Circle Officer Ratu by Notification dated 31.12.2001 and in compliance of the said notification, the Respondent No. 2 had issued letter dated 31.1.2002 directing the Respondent. No. 3 to handover charge to the petitioner, However, he has stated that, on 9.2.2002 an instruction has Issued to all Deputy Commissioners of Jharkhand by the Personnel. Administrative Reforms and Raj Bhasha Department. Government of Jharkhand stating that the cases of 18 Asstt. Settlement Officers notified for the post of Anchal Adhikari vide Notification dated 31.12.2001 as contained at. Annexure-1 to the writ petition was under consideration of the Government and hence the joining of the above officers should not be accepted till final decision was taken by the Government. A copy of the letter dated 9.2.2002 has been marked as Annexure-A to the counter affidavit. According to this deponent, in the light of the letter dated 9.2.2002, Respondent No. 2 has withdrawn the letter dated 31.1.2002 as contained at Annexure-3 by an order dated 21.2.2002, a copy whereof has been marked as Annexure-3 to the counter affidavit. This deponent has further stated that, in the background of the aforementioned instructions, the petitioner has not been allowed to join on the post of Circle Officer at Ratu in the district of Ranchi.

6. A counter affidavit in this case has also been filed on behalf of Secretary, Personnel Administrative Reforms and Rajbhasha Department, Government of Jharkhand wherein it has been stated at para 7 that 18 Assistant Settlement Officers were posted as Circle Officer by the Revenue Department by Annexure-1 to the writ petition without, consulting the Department of Personnel and that

when the aforesaid fact came to the notice of the Department, of Personnel the matter was taken up and the land reforms Department sent the file to the Department of Personnel for consideration and the matter is under consideration at the highest level of the Government as per prevailing rules.

7. At para 9 of the said counter affidavit it has also been stated that the Assistant Settlement Officers belonging to the revenue service which is a separate cadre and they have no right to be posted as Circle Officer which is a cadre post of the said Administrative Service under the Department of Personnel. In that view of the matter, the joining of Assistant Settlement Officers who belonged to the Revenue Department and who have been posted as Circle Officer has been stayed by the Department of Personnel on 9.2.2002 and this matter is pending consideration in the manner stated above. At para 10 it has also been stated that the petitioner will be given a suitable posting keeping in view his rightful claim and the period of waiting will be regularised in due course without any loss of salary to him.

8. In reply to the aforementioned counter affidavits, the petitioner has filed a reply on or about 20.2.2002 wherein he has *inter alia*, stated at para 6 that pursuant to the Notification dated 31.12.2001 as contained at Annexure-1 several Assistant Settlement Officers, including Sri Badri Nath Singh (Notification No. 4620), Bipin Bihari Lal Verma (Notification No. 4622), Yugal Kishore (Notification No. 4626), Sanjay Narayan Singh (Notification No. 4644), and Jeevandhar Mistri (Notification No. 4652) have all been allowed to take over charge and function as Circle Officer in their respective place of posting and the petitioner has been singled out. He has also made a statement at para 9 that it is incorrect on the part of the deponent of the respective counter affidavit to allege that the members of the Administrative Service are alone entitled to hold that cadre post of Circle Officer and that it is not the exclusive domain of the officers of the State Administrative Service at the exclusion of the officers of the Revenue Department and has stated that this is not an issue in the writ application. According to him, the letter of the Deputy Commissioner as contained at Annexure-3 to the writ application i.e., the letter dated 31.1.2002 which shows that the petitioner's joining as Circle Officer, Ratu, in the district of Ranchi was firstly accepted and thereafter the Respondent No. 3 was directed to hand over charge to the petitioner.

9. In reply to the aforementioned contention of the petitioner, the Department of Personnel has filed a supplementary counter affidavit wherein at para 5 while referring to the aforementioned Assistant Settlement Officers named by the petitioner in para 6 of his reply, it has been stated that these officers have been allowed to take over charge and function as Circle Officer in their respective places of posting but after issuance of letter dated 9.2.2002 no Assistant Settlement Officers including the petitioner have been allowed to join on their respective post. It has also been stated that those Assistant Settlement Officers who had already joined on the transferred post as Circle Officer have not been

disturbed till the matter is decided by the Government. These Respondents have also brought on record a notification dated 14.3.1997 as Annexure-3 to the said supplementary counter affidavit which is a notification issued by the Department of Personnel, Administrative Reforms, stating inter alia, that only one officer belonging to the State (Bihar) Administrative Service can be posted as Circle Officer and, therefore, according to them, the petitioner who is not an officer of the State Administrative Service Cadre is not entitled to hold the post of Circle Officer.

10. As stated above from the rival contentions of the parties, the following facts are necessary to be taken into consideration :--

(a) The petitioner has stated that by Annexure-3 Deputy Commissioner Ranchi accepted the joining of the petitioner and then directed the Respondent No. 3 to handover charge to the petitioner.

(b) The State-Respondents have stated that the petitioner being an Assistant Settlement Officer can not be posted as Circle Officer because as per Notification dated 14.3.1997 it is only an Officer belonging to the State Administrative Service cadre who can be posted on the post of a Circle Officer. According to them, the petitioner is not yet an officer of the cadre of the State Administrative Service, and, therefore, he cannot be posted on the post of a Circle Officer:

(c) The State-Respondents have also stated that those Assistant Settlement Officers who had already joined on their transferred post as Circle Officer have not been disturbed till the matter relating to the posting of Assistant Settlement Officer as Circle Officers is finalised at the level of the Government.

11. From a perusal of Annexure-3, it is apparent that the Deputy Commissioner clearly says that the joining of the petitioner is being accepted and after such acceptance. the Respondent No. 3 was being directed to handover charge to the petitioner. Therefore, the first issue is decided in favour of the petitioner i.e. his joining was accepted. However, so far as second and third issues are concerned, it is evident from Annexure-B i.e., the Notification dated 14.3.1997 that an officer belonging to the State Administrative Service cadre can be posted on different posts including the posts of Circle Officer/Assistant Settlement Officer. In other words, an officer of the State Administrative Service cadre can be posted on both the aforesaid posts but whether a person who has not yet been appointed on the State Administrative Service cadre can still be appointed as a Circle Officer is not mentioned in the aforementioned notification. In that view of the matter, the other two issues can not be decided in favour of the petitioner specially when the Respondent have specifically stated that the petitioner is not yet an officer in the State Administrative Service cadre and, therefore, he can not be appointed on the post of a Circle Officer.

12. It is necessary to mention that an intervention application has also been filed in

this case by one Philbius Barla who has made a prayer that he should be added as a party-respondent in the instant case. He has stated at para 3 that he is the present Circle Officer at Ormanjhi and that the petitioner who is an ASO at Hazaribagh has been posted as Circle Officer, Ratu in place of Respondent No. 3 who has been directed to take over charge of Circle Officer at Ormanjhi and. therefore, if the prayer of the petitioner is allowed then there will be an implied direction upon the Respondent No. 3 to join at Ormanjhi on his place and the same would be against the direction of the Election Commission of Jharkhand which by a Notification dated 21.1.2002, had already stayed all transfers and posting within the State of Jharkhand. According to him. the petitioner has not been relieved as yet from his present place of posting at Hazaribagh and that he is getting salary from his previous place of posting Le., Hazaribagh.

13. I am rejecting the Interlocutory/Intervention application of Philbius Barla as it appears from the counter affidavit filed by the petitioner against the said intervention petition that the said Philbius Barla had unsuccessfully moved this court in WP (S) No. 95/2002 challenging his own notification of transfer which was also contained in the same Notification as contained at Annexure-1 vide Notification No. 4618 whereby he was transferred from the post of Circle Officer. Ormanjhi to the post of Circle Officer, Mandro, Sahibganj. According to the writ petitioner. Philbius Barla thereafter moved an LPA No. 46/2002 which was also dismissed on 18.1.2002. The petitioner has stated that therefore, this intervenor has no option but to obey the transfer order which was confirmed upto the LPA court and, therefore, his intervention is nothing but an indirect way of obtaining an order from this Court after being unsuccessful both in the writ petition as also in the LPA Court.

14. In view of the premises aforesaid this matter is remanded to the Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand who has filed counter affidavit in this case on 26.2.2002 to immediately and forthwith resolve the impasse and redress the grievance of the petitioner, in accordance with law and after taking into consideration the Government Circulars and/or Rules/ Notifications.

15. in view of the fact that I am remanding the matter in the manner aforesaid, if goes without saying that the authority concerned will look into the case of the petitioner and the Respondent No. 3 only and in view of the fact that Philbius Barla has already failed both in the writ petition, WP (s) No. 95/2002 as also in the LPA, No. 46/2002 as stated above, his interference should not be allowed.

16. Considering the aforementioned submission, and rejecting the intervention petition of Philbius Barla, the matter is being disposed off with the directions/ observations mentioned above.

17. With the aforementioned observations/directions, this writ petition is disposed off.