
(2001) 02 PAT CK 0085
In the Patna High Court
Case No : M.J.C. No. 540 of 2001

Kapildeo Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Citation : (2001) 1 BLJR 782 : (2001) 2 PLJR 85

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—This petition, registered in this Court as MJC No. 540 of 2001, has been filed in a disposed of writ petition, being CWJC No. 12519 of 2000. The petitioner had filed the writ petition challenging the allocation of his services to the newly-created State of Jharkhand. The allocation of services to Jharkhand was primarily assailed on the ground that the petitioner is due to retire on February 28, 2001 and sending him to Jharkhand at this stage would cause undue, unwarranted and unnecessary hardships to him.

2. Mr. Mahesh Prasad, learned G.P. Ill who is present now and who had appeared on behalf of the State in that writ petition had pointed out at the earlier occasion that though under the guidelines a person due to retire within two years was not to be sent to Jharkhand, the case of the petitioner might have been overlooked due to the fact that he did not give any option either to stay in Bihar or to go to Jharkhand and, therefore, the petitioner like every one else failing to give an option was sent to Jharkhand. Mr. Prasad had also pointed out that the petitioner had already made a representation against the allocation of his services to Jharkhand and his representation was forwarded by the Finance Department to the Advisory Committee constituted for considering the grievances of the Government employees arising from the allocation of their services to the two States. In that view, this Court did not intervene in this matter at that stage and disposed of that writ petition on 18.1.2001 by passing the following order:

On hearing Counsel for the petitioner and the State Counsel and on going through the writ petition and the counter-affidavit, this matter is disposed of with the observation that this Court expects the Advisory Committee handed by Shri Venkataraman to examine the petitioner's grievance and to pass a final order on his representation as early as possible and preferably within two weeks from the date of receipt/production of a copy of this order.

Let a copy of this order be given to Mr. Mahesh Prasad for onward communication.

3. In this MJC petition, it is stated that following the order passed by this Court the petitioner's representation and a copy of this Court's order, dated 18.1.2001 were duly forwarded to the Advisory Committee. But, the petitioner's representation has failed to receive any attention by the Advisory Committee and any order on that representation is yet to be passed. In the meanwhile, the petitioner is going to retire within the next few days.

4. It may be noted here that in another case being CVWJC No. 4797 of 2001 Meera Kumari v. Union of India and Ors. the issue of the scope and powers of the Advisory Committee came under consideration before this Court and by order, dated 14.2.2001 passed in that case, it was observed as follows:

Mr. Sanjay Singh today informed that the Advisory Committee, as its name suggested, was a purely recommendatory body. On examining each case that might go before it the Advisory Committee would make recommendation to the Central Government. Under the provisions of the Act, there was nothing to indicate that the recommendation made by the Committee would be binding upon the Central Government. The State Government in any event does not come into picture and the State Government cannot even act on the recommendation made by the Advisory Committee.

Mr. Sanjay Singh also stated that the Advisory Committee had no powers to make any interim direction/recommendation and it could not stay the operation of the order provisionally allocating the service of an employee to State of Jharkhand.

Having regard to the limitations of the Advisory Committee, this Court feels that it may not be wholly appropriate to mechanically relegate all such cases to that Committee as that might result into injustice to an individual employee as the case appears to be in the writ petition in hand.

5. From what is stated above, it is evident that when the petitioner came in the writ petition, this Court declined to examine his grievances and relegated him to the Advisory Committee on the premise that that was a forum where the petitioner could get a speedy, adequate and efficacious remedy. Before the Advisory Committee, however, his grievances remain unattended. Thus, to all intent and purposes, the petitioner has been rendered remedy less and without a forum for agitating his grievances. This, to my mind, has resulted in grave injustice to him.

6. I am, therefore, inclined to allow this MJC and recall the order, dated 18.1.2001 by which the writ petition (CWJC No. 12519 of 2000) was earlier disposed of.

7. As noted above, it is an admitted position that the petitioner is due to retire on February 28, 2001. It is also not denied that according to the guidelines framed under the Act, a Government employee due to retire within two years was not to be sent to Jharkhand and the only reason as pointed out by the State Counsel for allocating the petitioner to Jharkhand is that he did not give any option to stay in Bihar. That, to my mind, is not a good reason for sending the petitioner to Jharkhand in violation of the guidelines. The petitioner might not have given any option for the simple reason that his case was fully covered by the guidelines framed by the competent authorities.

8. I am, therefore, inclined to intervene in this matter in favour of the writ petitioner. The order of allocation of his service to the newly-created State of Jharkhand is held to be bad and unsustainable. Consequently, the order contained in Annexure 1, insofar as it relates to the petitioner, and the order as contained in Annexure 2 by which the petitioner was relieved are set aside. As a result the petitioner will continue, till his superannuation, in the service of State of Bihar and would be deemed to have been always in the service of this State.

9. C.W.J.C. No. 12519 of 2000 is accordingly allowed. The petitioner will be paid his salary and retiral dues in the light of this order.

10. Let a copy of this order be handed over to Mr. Mahesh Prasad, G.P. III.