
(2000) 12 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 12960 of 2000

Kartik Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 58(1)

Citation : (2001) 1 PLJR 718

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard the parties at the stage of admission.

2. In both the writ applications the prayer is for quashing the notification No. 9839 dated 27.11.2000 (Annexure-1) by which services of Petitioners in both the writ applications as well as of 92 other persons all belonging to Agriculture Service, Government of Bihar have been returned back to their parent department, the Agriculture Department on the ground that they are not placed in the pay-scale of Rs. 6,500-10,500/- which the scale equivalent to pay-scale of Deputy Collectors. The impugned order further mentions that such order for repatriation from Rural Development Department, Government of Bihar is required in view of Panchayat elections for which a decision has already been taken by the State Government and a programme has commenced from 1.11.2000. As per Section 58(1) of Bihar Panchayat Raj Act, 1993 only Deputy Collectors or equivalent officials can be appointed as Executive Officers of Panchayat Samittees under the; aforesaid Act. The order further mentions that presently many officers of Agriculture services are posted as Block Development Officer although they are not placed in the aforesaid scale of Rs. 6,500/- 10,500/- which is the scale prescribed for Deputy Collectors and hence in order to make the future course of action that to appointment of Executive Officers qt Panchayat Samittees with Deputy Collectors or equivalent officials, service of the

writ Petitioners and others belonging to the Agriculture Service and cover (sic) by Annexure-1 have been returned back to their parent department i.e. Agriculture Department, Government of Bihar.

3. Besides seeking quashing of Annexure-1 the writ Petitioners have also prayed for a direction to the Respondents to pay them salary in scale of Rs. 6,500-10,500/- which is the scale of Deputy Collectors. From the materials on record it is apparent that the writ Petitioners are presently not placed in the scale of Rs. 6,500-10,500/-. No doubt several grounds have been urged in the writ petitions to KW that Petitioners should be held to be entitled for the aforesaid pay-scale but it beyond doubt that presently they are not getting the said scale.

4. On behalf of writ Petitioners it was first contended that since the Petitioners are entitled for the scale of Deputy Collectors hence the impugned order is based upon nonest facts and is therefore legal on account of malice in law. In order to support this contention and establish their entitlement to the scale of Deputy Collectors, the Petitioners placed reliance upon a judgment of this Court dated 19.9.96 passed in C.W.J.C. No. 282/96 Rameshwar Prasad Singh v. The State of Bihar and Ors. and other (sic) cases. That writ application was filed by officers belonging to Agriculture Service similarly situated as the Petitioners herein. At that time they had prayed for quashing of a notification dated 24.6.96 whereby their services had been repatriated to the Agriculture Department com Rural Development Department where they were holding the posts of (sic) Development Officers. At that time there was an alternative prayer to declare that the Petitioners were entitled for time (sic) promotion in the scale of Rs. (sic) 4,150/- and hence on ground of being placed in lower scale than the scale Deputy Collectors, they should not be (sic) By the said judgment the named Single Judge found no illegality in the order of repatriation and discussed the writ application on the ground (sic) admittedly till then they were placed in a lower scale of pay. The learned Single Judge also considered the alternative prayer with regard to time bound promotion in the higher scale and in that respect a direction was issued to consider the claim of those Petitioners for time bound promotion without any further delay.

5. It appears that those writ Petitioners preferred Letters Patent Appeals and by order dated 17.10.96 passed in L.P.A. No. 1037/96 interim order was passed not to relieve the writ Petitioners if they had not been relieved till that date. According to Petitioners the interim order is still in effect and therefore, they have continued to be on deputation but are now being affected by the impugned order contained in Annexure-1. On this ground also, it has been submitted on behalf of the Petitioners that the impugned order should be held illegal as one in violation of interim order passed in L.P.A. No. 1037/96 which is still pending.

6. Having considered all the relevant facts and circumstances, I am of the view that a fresh order of repatriation can be passed by the concerned authorities provided it is in accordance with law. The interim order passed in pending Letters Patent Appeals must be construed to relate to relieving in terms of earlier order

dated 27.6.96 which was under challenge in C.W.J.C. No. 6282/96 and other analogous cases.

7. As noticed earlier the Petitioners are presently not placed in the pay-scale of Rs. 6,500-10,500/- and hence it cannot be said at the present that the impugned order is based upon non est facts. Hence this Court, agreeing with the view of the learned Single Judge in judgment dated 19.9.96 finds no merit in the challenge of the Petitioners to the impugned order of repatriation contained in Annexure-1. While on this aspect, it is pertinent to mention that a deputationist has no legal right to continue on deputation in another department unless such a right can be shown to flow from the order of deputation or from any other relevant provisions of law. The Petitioners have failed to show any such right in them. In such circumstances an order for their repatriation, in law, requires no reason as it does not affect their legal right in any way muchless to their claim for a higher scale of pay on any ground whatsoever. Such claim for entitlement to higher scale of pay cannot be linked with a claim to continue on deputation. So far as Petitioners claim for higher scale on account of time bound promotion is concerned this Court has already issued a direction to consider such a claim without any further delay, as noticed above. However, in the facts of the case the concerned Respondents are directed to consider such claim of the Petitioners and other similarly situated persons in terms of judgment of this Court dated 19.9.96 and in accordance with law as expeditiously as possible preferably within a period of six months from the date of production/communication of a copy of this order before the concerned Respondents. So far as parity in pay-scale with 1423 other Agriculture Inspectors is concerned, in the earlier judgment dated 19.9.96 it was noticed that writ petition bearing No. 12050/93 is pending in this Court and hence it would not be proper to express any opinion on this issue as no final judgment passed in that case was produced before this Court. For alleged anomalies in the recommendation of the 5th Pay Revision Committee the Petitioners are granted liberty to file representation before the concerned authority for removal of alleged anomalies. With these observations/directions these writ applications are dismissed with regard to the prayer for quashing of the impugned notification dated 27.11.2000.