
(1988) 09 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1200 of 1988

Maresh Chandra Jha

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Citation : (1988) PLJR 275

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Dr. Sadanand Jha. Harish Chandra Mishra, for the Appellant; M.S. Madhup S.C.I for the State, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ petition is primarily directed against an order dated 23.12.1987 and as contained in Annexure 11 to the writ petition whereby and whereunder the petitioner was sought to be transferred as selection grade clerk from the office of District Superintendent of Education, Godda to the office of Sub divisional Education Officer, Pakur. The petitioner also questions the office order dated 11th February 1988 issued by the Deputy Development Commissioner Godda and as contained in Annexure 15 to the writ petition whereby and whereunder the petitioner was sought to be relieved.

Shorn of all unnecessary details, the fact of the matter is as follows The petitioner, who had been working in the office of the District Superintendent of Education, Godda having joined the said post on 5.1.1987, by reason of the impugned order, was transferred to the office of the Sub divisional Education Officer, Pakur.

2. Mr. Sadanand Jha, the learned counsel appearing for the petitioner has raised a very short question. The learned counsel has submitted that the case of the petitioner comes within the purview of

3. The Divisional Establishment Committee, which is the competent authority, as

stated in paragraph 27 of the writ petition, comprises of the concerned Regional Deputy Directors of Education, member of the training college and three seniormost District Education Officers of the division.

This statement has not been controverted by respondents.

4. The petitioner contends that the respondent no. 8, who had been acting as Sub divisional Education Officer, Sahebganj, did not fulfil the requirement of being a member of the aforementioned Divisional Establishment Committee as he was not a senior most District Education Officer of the division.

5. The petitioner has asserted in paragraph 28 of the writ petition that the said respondent no. 8 was not a regular District Education Officer, what to speak of being a senior District Education Officer. The petitioner, therefore, submits that the order as contained in Annexure 11 to the writ petition is bad in law.

6. In reply to the said statements, the respondent no. 6 the District Superintendent of Education has annexed a copy of the notification dated 27.10.1987 with the counter affidavit of the respondents whereby and whereunder the respondent no. 8 was allegedly authorised to perform the duties of the District Education Officer in addition to his own duties.

7. The short question, therefore, which arises for consideration in this case, is as to whether the respondent no. 8, who had merely been authorised to perform the duties of the District Education Officer, Sahebganj in addition to his own duties fulfils the criteria of being a member of the Divisional Establishment Committee or not ?

8. From the aforementioned notification dated 27.10.1987 it is evident that the respondent no. 8 was not even temporarily promoted to the post of District Education Officer. He was not even been holding the post of the Dist-Education Officer. In absence of regular District Education Officer, he was merely authorised to perform the duties of District Education Officer in addition to his own duties. The said arrangement was therefore, ad hoc in nature. The respondent no. 8, thus, was not a District Education Officer farless seniormost District Education Officer of the division.

9. No counter affidavit has been filed on behalf of the respondent no. 8 to controvert the said facts, although he has been impleaded in this writ petition by name.

10. It is now a well settled principle of law that if an authority, who take? part in a deliberation to which he is not entitled to by reason of the provisions of any statute or any statutory instrument, the decision taken in such a meeting becomes vitiated in law.

11. The learned counsel appearing for the petitioner, in this connection, relied upon a decision of a Division Bench of Orissa High Court reported in 1986 L.I.C. 64 (Dr. Santosh Kumar Dash and another vs. The State of Orissa and others). I

respectfully agree with the said decision.

12. In this view of the matter, as the respondent no. 8 was merely incharge of the current duties of a vacant post, he was bestowed upon an authority holding a particular post, under the provisions of a statute.

13. Recently, in respect of a matter relating to the functions of assessment sub-committee constituted under the Bihar Agricultural Produce Market Act, I had the occasion to consider a similar question in M/s Kailash Roller Flour Mills and another vs. State of Bihar and others (1987 P.L.J.R. 1118). In the said decision it has been held as follows:--

It is also a well settled principle of law that if a person, who associates himself in deliberations with some persons while discharging some statutory functions, is incapable of doing so in terms of the provisions of statute or otherwise the decision of the entire body becomes vitiated inasmuch as such person, who was not authorised by law to associate himself with the other members of the Committee may influence the mind of such other member while arriving at a decision.

14. In the said decision reliance was placed by me upon decisions of this Court reported in M/s Chhabi Rani Agro Industrial Enterprises Ltd. vs. The Agricultural Produce Market Committee, Mohania and others (1984 B.B.C.J. 408 : 1984 P.L.J.R. 446); Ramautar Choudhary vs. The Managing Director, Bihar State Agricultural Marketing Board, Patna and others (1984 B.B.C.J. 441 : 1984 P.L.J.R. 412) and M/s Deo Lal Singh and others vs. State of Bihar and others (C.W.J.C. No. 5215 of 1985).

15. Further, in the instant case, the allegations of malafide as against the respondent no. 8 have also not been controverted. In this view of the matter, the said allegations would be deemed to have been admitted.

The respondent no. 8 having thus been biased as against the petitioner, was also not competent to take part in the deliberations.

Reference in this connection may be made to A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . In the said decision it has been held as follows :--

The real question is not whether the was biased, for it is difficult to prove the state of mind of a person. There must be a reasonable likelihood of bias and a mere suspicion of bias is not sufficient. In deciding the question of bias human probabilities and ordinary course of conduct must be taken into consideration

16. Recently, the Supreme Court in Ashok Kumar Yadav and Others Vs. State of Haryana and Others, has clearly held that the question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. It has further been observed "What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to open to a reasonable apprehension in the mind of others that there is

likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court."

17. In this view of the matter, I have no other option but to hold that the order of transfer passed as against the petitioner and the consequent order of relieving as contained in Annexures 11 and 15 to the writ petition are vitiated in law; and as such are liable to be quashed by this Court. Let an appropriate writ be issued accordingly.

18. However, it is observed that the authorities of the State of Bihar would be free to pass an order of transfer as against the petitioner in accordance with law. In the result, this writ petition is allowed but in the facts and circumstances of the case, however, there will be no order as to costs.