
(2000) 01 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No. 12287 and 11477 of 1999

Mahmood Azam Siddique

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Citation : (2000) 3 PLJR 139

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Samrendra Prasad Singh, R.K. Sinha and M/s. Samrendra Pratap Singh, R.K. Sinha and K.K. Singh in C.W.J.C. No. 12287 of 1999 and Mr. Samrendra Kishore in C.W.J.C. No. 11477 of 1999, for the Appellant; S.K. Ghose, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both the cases, as common Notification, contained in Memo No. 936(3) dated 1st November 1999 are under challenge, they were heard together and are being disposed by this common order. The petitioners are member Bihar Health Service and were transferred at one or other place in the month of August, 1999. The petitioner, Mahmood Azam Siddique of C.W.J.C. No. 12287/99 was transferred in the Primary Health Centre, Kataiya within the district of Gopalganj, vide Notification dated 17th August, 1999, whereas petitioner. Ramchandra Safi of C.W.J.C. No. 11477 of 1999. was so transferred to Referral Hospital, Manigachi within the district of Darbhanga, vide Notification dated 17th August, 1999.

2. It is not in dispute that the petitioners on such transfer joined the transferred post and continued to function. While the petitioners were so functioning, the Respondent State issued the impugned Notification on 1st November, 1999 and cancelled the earlier Notification dated 17th August" 99 on the ground that there were some technical error in the said notification. The persons were treated to have been automatically re-posted to the posts where they were earlier

functioning.

3. According to the counsel for the petitioners, once notification of posting issued and acted upon, the State has no jurisdiction to cancel the same. On the other hand, according to the counsel for the State, there being mistake committed in the issuance of earlier notification of posting, it was always open to the State to correct the mistake.

4. A counter affidavit has been filed by the State in C.W.J.C. No. 11477 of 1999. Learned A.A.G. II states that the said counter affidavit can be also taken into account for disposal of the connected C.W.J.C. No. 12287 of 1999.

5. According to the Respondents, the cases of 46 members of Bihar Health Services were placed before the Establishment Committee which made recommendation for transfer. However, when the same was placed before the approving authority, the authority approved the name of only one candidate for such transfer, in view of another order passed by this Court in some other writ petition. However, by mistake, the Department issued the Notification dated 17th August, 1999 and transferred all the 46 incumbents whose names were recommended by the Establishment Committee. Such mistake having come to the knowledge of the State, the impugned Notification dated 1st November, 1999 has been issued and earlier notification of transfer has been cancelled in respect of 45 candidates whose names were not approved by the competent authority.

6. Reliance was placed by the counsel for the State on Supreme Court decision in *Mitrangshu Roy Choudhary and Ors. vs. Union of India and Ors.* reported in 1999 (3) A.I.S.L.J. 173 to show that the competent authority has jurisdiction to rectify the mistake by cancelling the earlier order.

7. So far as power of transfer is concerned, it is not in dispute that the State has jurisdiction to transfer its employee from one place to another place for which specific provisions have been made under Bihar Service Code (See Rules 51 and 56).

8. However, the question arises as to whether a Notification of transfer already issued and acted upon, the same can be cancelled/recalled or rescinded subsequently or not.

9. So far as the case of *Mitrangshu Roy Choudhary and Ors.* (supra) is concerned, I feel that the said case is not applicable in the present cases. That was the case of appointment and mistake was committed in the matter of issuance of appointment letter. The same having come to the knowledge of the authority, mistake was rectified and orders of appointment were cancelled. The Supreme Court upheld the same.

10. It is a settled law that in the matter of appointment, on joining, the same stands accepted by the incumbents, but the appointment letters subsists till the employee retained in service and gets benefit out of such orders of appointment. On the other hand, in the matter of transfer, once notification is acted upon,

nothing subsists and the notification of transfer becomes redundant for all purposes.

11. In the aforesaid background, the order of transfer having become redundant, the question of rescinding such order does not arise.

12. Similar view was taken by this Court in the case of Shyam Chandra Jha vs. State of Bihar & Ors. (Unreported) in C.W.J.C. No. 8282 of 1998, disposed of on 9th December, 1998. Therein, this Court held that the notification of transfer having taken effect, the incumbent having joined in pursuance of order of transfer, the Notification spent up its force and there was nothing substantive which could be recalled or rescinded.

13. In view of aforesaid decision and the fact that the earlier notification dated 17th August, 1999 was acted upon by the petitioners, where in after the same become ineffective, I hold that the State of Bihar had no jurisdiction to rescind/ recall such notification of transfer.

14. For the reasons aforesaid, I set aside the common Notification dated 1st November, 1999 so far as it relates to the petitioners. They will be treated to be continuing against the posts where they have been transferred and joined in pursuance of Notification dated 17th August, 1999.

15. In the counter affidavit, the Respondents having not shown any administrative exigency in the matter of transfer of petitioners, I am not giving any liberty to them to re-transfer the petitioners to some other places without the recommendation of the Establishment Committee.

16. Both the writ petitions are allowed with the aforesaid observations. Let a copy of this order be handed over to learned A.A.G. II.