
(2001) 02 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 1797 of 2001

Meera Kumari

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 PLJR 217

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Mritunjay Kumar, for the Appellant; Subhash Pd. Singh for the U.O.I. and M/s Sanjay Singh and Shailendra Kr. Singh for State, for the Respondent

Judgement

Aftab Alam, J.—Heard Mr. Rajendra Prasad Singh, Sr. Counsel appearing in support of this writ petition and Mr. Sanjay Singh, SC 9 appearing for the State. The petitioner who works as a PBX operator in the department of Labour, Planning and Employment in the State Secretariat has come to this Court in this petition under Article 226 of the Constitution challenging the order, provisionally allocating her services to the newly formed State of Jharkhand.

2. Before proceeding further this court would like to note that following the division of this State the services of a large number of employees of the State Government have been provisionally allocated to the State of Jharkhand awaiting the final division of the cadres under the provisions of the Bihar Reorganization Act, 2000. The hardships resulting from allocation of ones services to a different State is not different to imagine. A person who is settled at one place having his/her social roots there and who is satisfactorily discharging his/her duties is told one morning that he has to pack up and go to a new place as the result of the division of the State. Grievances have, therefore, come galore to this court and a number of similar writ petitions were earlier placed before this court. While hearing those writ petitions it was brought to the notice of this court that an

Advisory Committee under the Chairmanship of Mr. C.R. Venkatraman, IAS (retired) had already been constituted by the Central Government to examine the grievances of employees arising from provisional allocation of their services to the State of Jharkhand. This court noted its appreciation for the foresight shown by the Government in providing for a forum where the grievances of the adversely affected employees could be examined. This court accordingly relegated all such petitions to the Advisory Committee leaving it open to the concerned employees to place the grievances in the form of representation before the Advisory Committee. It was also observed that the Advisory Committee may be in a position to take an over all view of the matter, apart from the peculiar features of an individual case and the special hardships that might have to be faced by an individual and thus the scope for examining the relevant issues appeared to be more extensive before the Advisory Committee than before the writ Court.

3. Therefore, when this case was earlier taken up it was felt that like the earlier petitions arising from allocation of services to Jharkhand this writ petition too may be relegated to the Advisory Committee leaving it open to her to agitate her grievances before the Advisory Committee. In the facts and circumstances of this case, however, it appeared that an interim protection to the writ petitioner may not be out of place and that gave rise to the thought whether the Advisory Committee itself was in a position to give any interim protection to the aggrieved employee approaching it and what exactly was the nature of the authority of the Advisory Committee. This matter was accordingly adjourned and Mr. Sanjay Singh was asked to find out all the details concerning the working of the Advisory Committee.

4. 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.

5. 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 services of an employee to the State of Jharkhand.

6. 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.

7. The writ petitioner is a female. She is a domicile of the State of Bihar. Her

husband is also a Government employee and has been posted at Patna and he has somehow escaped being allocated to the State of Jharkhand. In these circumstances the petitioner had naturally given her option for the State of Bihar. It further appears from the letter, dated 31.1.2001 from the Labour Commissioner, Bihar to the Commissioner cum Secretary, Labour, Employment and planning department that the provisional allocation of the petitioner's services to the State of Jharkhand was the result of a mistake inasmuch as it was overlooked that she was not the junior most employee In the PBX cadre and according to the guide lines framed under the Act the junior most had to be picked up for provisional allocation of service to the State of Jharkhand. No action appears to have been taken on this letter by the Labour Commissioner as by that time it was too late for the Government authorities to take any remedial measures.

8. It might be so for the Government authorities but not for this court. When it is brought to the notice of this court that the allocation of the petitioner's services to Jharkhand is the result of mistake and oversight, this court would certainly intervene and try to set things right and this court proceeds to do so. The order dated 13.1.2001 (Annexure-2) in so far as it relates to the petitioner is accordingly set aside. Consequently the office order dated 17.1.2001 (Annexure-3) relieving her from her present post is also set aside and the matter is remitted back for a fresh consideration by the concerned authorities of the Central Government and the State Government. The concerned authorities will pass a fresh order with regard to the petitioner in consultation with the Commissioner-cum-Secretary, Labour, Employment and Planning Department and in the light of the observations made in this order. A fresh order in the case of the petitioner is expected to be passed within three weeks from today. Let a copy of this order be given to Mr. Sanjay Singh for onward communication.