

(2003) 01 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10819 of 2002

Nawal Kishore Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0046

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioner is aggrieved by his repatriation from the State Election Commission, Bihar to the Bihar State Sugar Corporation vide Memo No. 2699 dated 30-9-2002 of the Election Commission.

2. The facts of the case so far as relevant may be stated as follows. The Election Commission by letter dated 24-7-2000 requested the Rural Development Department to make available officers and employees as detailed in their letter, for their posting in the Election Commission on deputation so that it could conduct the ensuing panchayat election. One of the posts mentioned in the letter was Information & Public Relations Officer. On 30-11-2000 the Directorate of Panchayat Raj, Bihar, requested the Managing Director, Bihar State Sugar Corporation Limited to spare the petitioner (and one Sri Satish Chandra Sinha) for his posting in the Election Commission on deputation basis. It was stated in the letter that decision had been taken to post the petitioner and said Sri Satish Chandra Sinha in the Commission on deputation basis, and at any time their services could be returned without assigning any reason. It is relevant to mention here that the petitioner is a permanent employee of the State Sugar Corporation then posted as Assistant Secretary. Copy of the letter/order of the Sugar Corporation or the Directorate of Panchayat Raj/Department of the Rural Development relieving the petitioner and deputing him in the Commission has not been brought on record but from the office order of the Election Commission dated 7-12-2000 it appears that the petitioner was relieved by the Sugar Corporation on 30-11-2000 itself. On 7-12-2000, by Annexure-4, the joining of

the petitioner in the Commission on the post of Public Relation Officer was accepted on the conditions inter alia, (i) that his deputation will be temporary till further orders in the old scale of Rs. 2000-38000/- and his services could be returned at any time without assigning any reason; and (ii) that his deputation will not be treated as a ground of appointment in the Government service and mere drawal of salary will not be treated as conferring any right on the post. The case of the petitioner is that he satisfactorily performed the duties of the post of Public Relation Officer. However, suddenly on 30-9-2002 his services were returned to his parent Organisation i.e. Sugar Corporation and he was relieved from the post with effect from 1-10-2000.

3. Shri Y.V. Giri, learned Counsel for the petitioner, made the following submissions. No reason has been assigned in the order dated 30-9-2002 but a plea has been taken that after the Panchayat Elections there was no work for the petitioner, but as the election is an ongoing process that ground must be rejected as non-est. The post of Public Relation Officer in the Election Commission is sanctioned one and the same has not been abolished. The petitioner has been singled out and repatriated due to mala fide on the part of the Secretary. The petitioner was sent to the Commission under the rehabilitation scheme. The Sugar Corporation being nonfunctional and there being no work nor any avenue for salary payment, the repatriation of the petitioner would virtually amount to his removal from service. The petitioner is due to superannuate in September, 2003 and at the fag end of his career he should not be made to suffer at the hands of the respondents. The petitioner was posted in the Commission under the orders of the State Government and therefore, it is the State Government alone which is competent to cancel his posting.

4. The last submission to the effect that in the absence of any order of the State Government the Commission was not competent to repatriate the petitioner's services, is no more available to the petitioner in view of the office order dated 31-10-2002 of the Rural Development Department, Panchayat Raj Directorate. By the said office order, enclosed as Annexure-10 to the reply affidavit of the petitioner, the State Government cancelled the deputation of the petitioner in the Election Commission with effect from 1-11-2002 and returned his services to the Sugar Corporation. The said order was later communicated vide Annexure-D to the rejoinder-affidavit of the Commission to the Standing Counsel No. VII, Patna High Court on 23-11-2002

5. As regards the petitioner's case that the post of Public Relations Officer has been sanctioned in the Election Commission, the case of the Commission is that there is no sanctioned post in the Election Commission except that of State Election Commissioner. All other staff have been borrowed in exigency of work for conducting the Panchayat Elections u/s 136(3) of Panchayat Raj Act, 1993. I do not wish to go into this larger question. Even assuming that a sanctioned post of Public Relation Officer is available in the establishment of the Election Commission, it does not mean that every sanctioned post must necessarily be

filled up. The Commission's file (Astha 10-23/2000) produced by its Counsel to examine the petitioner's plea of mala fide against the Secretary of the Commission discloses that the Commission is of the view that in stead of retaining the petitioner and paying him salary in the scale of Rs. 6500-10500/-, which is the pay-scale of Deputy Collectors of the Bihar Administrative Service, it would be better to ask the Panchayat Directorate to post a Deputy Collector rank Officer as Public Relations Officer who may besides performing the duties of that post may also perform other administrative duties assigned by the Commission. It is pertinent to mention that it is primarily for this reason that the petitioner was proposed to be returned to the parent Organisation. A proposal to this effect was mooted by the Deputy Secretary Shri Kamal Kumar Sinha on 13-5-2002 with which the Secretary Sri Suman Kumar agreed. The State Election Commissioner approved the proposal on 30-5-2002. This fact covers the argument that the reartriation was actuated by mala fide on the part of the Secretary which is thus not borne out from the records.

6. If thus the Commission has decided to get a Deputy Collector rank officer posted as Public Relation Officer so that he may perform such administrative duties as may be assigned to him, in addition to his duties as PRO, the decision including the consequential action returning the petitioner's services cannot be said to be arbitrary. It is to be kept in mind that the petitioner's deputation in the Commission was accepted on the express condition that the same shall be temporary till further orders liable to termination at any time without assigning reason. These terms are clearly binding on the petitioner. It is well-settled that a deputationist has no right to remain on a post on deputation.

7. The argument of Shri Giri however was that the petitioner's deputation should not be treated as deputation simpliciter in view of the fact that he was sent to the Election Commission under a rehabilitation scheme. In this regard he placed reliance on a Bench decision of this Court in the case of Amar Nath Singh (LPA No. 1566/97 decided on 22-7-1998). The petitioner an employee of the Bihar State Agro Industries Development Corporation Ltd., was posted in the Transport Department as Motor Vehicles Inspector. This Court held that the deputation was not made in the normal circumstances, he had been declared surplus as the Corporation was under financial crunch and being closed meaning thereby that the petitioner did not have any lien on the post held by him in the Corporation. The instant case is not one of posting or deputation in a Government Department.

8. Section 136 (3) of the Bihar Panchayat Raj Act, 1993 provides that the Government shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission under this Act. As a matter of fact, Article 243K(3) of the Constitution of India incorporated by 73rd Amendment also makes similar provision. It was in the light of these provisions that the Election Commission requisitioned the services of different categories of staff by aforementioned letter dated 24-7-2000 pursuant

to which the services of the petitioner and others were placed at its disposal. The distinguishing feature of the present case is that while in the case of departments it is open to the Government to post an officer/employee on deputation basis in another department, it cannot do so in the case of Election Commission. In other words the Government cannot thrust its decision or choice on the Election Commission. Whereas the department to which an employee is deputed may not object to such deputation when it is made under the valid order of the Government the Election Commission may refuse to accept such deputation. As a matter of fact, deputation has to be made only on the request of the Commission in terms of Section 136 (3) of the Panchayat Raj Act.

9. It will not be out of place to mention here that in terms of the provisions of Section 136 (1) & (2). of the Panchayat Raj Act the Election Commission has been created as an independent body not amenable to the administrative control of the State Government. Section 136 (1), the provision of which are akin to those of Article 324(1) of the Constitution, provides that there shall be a State Election Commission appointed by the Governor for superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to the Panchayat bodies in the State under this Act and the rules made thereunder. The Commission shall consist of a State Election Commissioner to be appointed by the Governor. Under subsection (2), the conditions of services and tenures of office of the State Election Commissioner shall be such as the Governor may by rule determine; provided that the State Election Commissioner shall not be removed from his office except in like manner and on like ground as a Judge of the High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. The object of these provisions obviously is to make the Election. Commission an independent body outside the control and power of superintendence by the State Government. In these premises, the decision in the case of Amar Nath Singh (Supra) is of little help to the petitioner.

10. The decision in the case of State of Mysore and Another Vs. R.S. Kasi, another decision relied upon by Shri Giri, is also of no help to him. In that case by a Government order the Gardamom Development Scheme in the Department of Agriculture along with 12 other Development Schemes and other research schemes were transferred to the Department of Horticulture along with their staff. As a result of the order the employees working i the Cardamom Development Scheme, also stood transferred to the Department of Horticulture. However an order repatriating the concerned petitioner to the Agriculture Department was passed. The Supreme Court held that when the entire Cardamom Development Scheme together with its staff stood transferred to the Department of Horticulture the appellant became an employee of that Department and was no longer in the Department of Agriculture, Any order repatriating him to the parent agricultural department was, therefore, invalid. The Court observed :

"The High Court accepted this contention and set aside the repatriation order. We are in agreement with the High Court's view that there could not be any repatriation of the respondent to the Department of Agriculture because when the entire Cardamom Development Scheme together with its staff stood transferred to the Department of Horticulture he became an employee of that Department and was no longer in the Department of Agriculture. In fact there was no post to which he could be repatriated since the post he was holding on 13th February 1963 came along with him to the Department of Horticulture."

11. It is obvious that the decision was rendered on entirely different facts. There is no transfer of the establishment nor, indeed, transfer of the petitioner's services in the instant case. He was merely posted on deputation basis on the request of the Commission till further orders with express condition that this will not create any right in his favour. In these premises, the petitioner cannot claim any right to continue in the office of the State Election Commission if the Commission does not want his services on a ground which cannot be said to be irrelevant.

12. All said and done, it is a fact that the petitioner's posting in the Election Commission was not made in the normal circumstances, I do not want to go into the question as to how the petitioner was selected from amongst different employees for the post of PRO in the Election Commission. The fact is that the Sugar Corporation is running in dire straits. There is hardly any work for the employees and those working there are not being paid salary. In the circumstances if in order to rehabilitate the petitioner, the State Government sent him to the Election Commission it is the duty of the Government to rehabilitate him elsewhere. Thus while the petitioner cannot force his continuance in the Election Commission against its wishes, he may be entitled to consideration of his case for another deputation as a part of rehabilitation package in other department. The State Government should consider his case and depute him in another department as it has done in the case of several other employees of the Sugar Corporation. Considering that the petitioner is due to superannuate in September, 2003 the Government should take decision preferably within one month of receipt of a copy of this order.

13. Before I close I must notice the submission of Shri Giri which was like cry of desperation that the petitioner is prepared to work in the Election Commission in the present scale. The decision to repatriate the petitioner was taken in the wake of the office order of the Sugar Corporation, dated 7-5-2002, revising the petitioner's pay, on his representation, on the condition that the benefit of revised pay will be available to him during the period of deputation and on his return to the Corporation he will be paid his earlier salary. This indeed was a peculiar decision with which the officials of the Election Commission rightly expressed reservations. They took the view that if the petitioner has to be paid his salary in the revised scale of Rs. 6500-10,500/- it will be better to have the services of a Deputy Collector. I have already dealt with this aspect of the case

above. If the petitioner is prepared to work in the Commission in the present scale, the Commission may consider his request, on its own merit, if it so likes without being influenced by dismissal of the writ petition.

14. With the above observations, the writ petition is dismissed.