

(2003) 02 PAT CK 0078
In the Patna High Court
Case No : C.W.J.C. No. 12053 of 2002

Raghunath Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : (2003) 02 PAT CK 0078

Final Decision : Allowed

Judgement

Shashank Kumar Singh, J.—Heard the parties.

2. All the three writ applications were heard together and are being disposed of by this common order with the consent of the parties, as the Petitioners are either the employees of the Sugar Corporation or the Fisheries Development Corporation, who had been sent on deputation to the State Government for absorption of their services from where now they were being repatriated to their Parent Department. Petitioners in all the three applications are aggrieved by the said order of repatriation as according to them, as their deputation was in view of the decision of the State for absorption they cannot -be treated as a person on deputation and can be sent back any time.

3. On the other hand it has been contended that in view of the Circular of the Finance Department dated 16.11.99 there can be deputation of a State employee in Public Sector Undertaking but not vice versa, as such, it has been contended by the learned Counsel for the State appearing in these writ applications that as a deputationist does not have any right and as a Circular of the Finance Department debarring such deputationist was there from before, as such, these writ applications should not be allowed, rather dismissed on merit.

4. A counter-affidavit has been filed in two of the writ applications. One relating to the employees of the Fisheries Development Corporation and other to the Sugar Corporation. The third writ application also relates to the Sugar Corporation.

5. The contention on behalf of the Petitioners in all the three writ applications is that it is not in dispute, as has been argued by the State and a proposition which is well settled that a deputationist does not have any right. He holds lien in his department and either he can be recalled by his Parent Department or repatriated from the place where he is on deputation by the aforesaid department but according to the learned Counsel for the Petitioners, the case of the Petitioners is entirely different, as they are the employees of the Conditions/ Boards which have become financially non-viable or the employees had become surplus, rather on the direction of the State Government itself their liquidation has been directed to be done and/or they are being wound up. As such, the result of the repatriation would be their removal from service which, in a welfare State, cannot be done without any fault on their part resulting in an order which would be prejudicial.

6. Secondly, it has been argued that the same has been done subsequent to the Circular of the Finance Department which has been relied upon by the State above, pursuant to the decision of the State to depute the employees of the Corporations/Boards which were sick or the employees have become surplus for the purpose of their absorption. A decision which has been considered and endorsed up to the level of the Chief Minister of the State also.

7. In that view of the matter, it has been argued that the present deputation of the writ Petitioners in these writ applications was not a deputation simpliciter but deputation for absorption and as such their repatriation is bad and be quashed.

8. A fact which has not been contested by the parties, rather accepted is that the Corporations to which the Petitioners of the three writ applications belong are at the verge of closure. It is also admitted that if the Petitioners are allowed to be repatriated, they would not be getting their salary A policy decision of the State Government which has been brought on the record, though still not approved by the Cabinet would go to show that these deputations had been done in pursuance of a Scheme, which had been approved up to the level of the Chief Minister of the State whether it has been notified or not is one question but persons, who have been allowed to avail benefit of it and have been deputed, today in view of the same, cannot be allowed to be sent back to the Corporations/ Boards which they are under liquidation or being wound up.

9. In support of the Petitioners' contention a judgment of this Court in the case of Md. Shamim Ansari Vs. State of Bihar and Others, has been relied upon. A Bench of this Court after considering the rival contention in the aforesaid writ applications and the judgments in L.P.A. No. 1566 of 1997 and SLP No. 312/ 99, in which it was held that as the deputation of the Petitioners of the aforesaid case was not a case of deputation in ordinary sense of the term but would result in their removal from service. As such, the same was found to be bad and quashed. A further fact which was available in the aforesaid case was that there were complaints against those writ Petitioners and for the aforesaid reason, they were being repatriated but the court found that as their repatriation would

virtually amount to their removal, it directed that if there were complaints against the Petitioners, a departmental proceeding can be initiated but can not be sent back to their parent department, as the same would amount to dismissal from service.

10. Another order of this Court in L.P.A. No. 1566 of 1997 has also been relied upon by the learned Counsel for the Petitioners whereby relying on the decision of the Supreme Court in the case of State of Mysore and Another Vs. R.S. Kasi, it was held that if the lien of the writ Petitioners was allowed to be cancelled the same would virtually amount to dismissal from service. The employment of a person being a source of his livelihood cannot be infringed on the basis of a procedure, which is not just, fair and reasonable.

11. In view of the aforesaid facts as It is not in dispute that the repatriation of the writ Petitioners would also virtually amount to their dismissal from service, this Court has no option but to quash Annexure 38 of C.W.J.C. No. 12364/02. Annexure-9 of C.W.J.C. No. 12949/02 The Petitioners would be deemed to have been continuing on their post of deputation, even if the impugned annexures had been given effect to.

12. In the result, these writ applications are allowed to the extent indicated above.