
(1997) 03 PAT CK 0054
In the Patna High Court
Case No : C.W.J.C. No. 4443 of 1995

Rajendra Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-03-1997

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1997) 1 PLJR 841

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : R.N. Mukhopadhyaya, for the Appellant; Ganga Prasad Roy and Uma Kant Singh, for the Respondent

Judgement

A.K. Ganguly, J.—Heard learned Counsel for the parties in connection with the interlocutory applications filed which are at flag "A" and "B".

2. By an order dated 14.10.1996 this writ petition was disposed of by directing the Petitioner to file an appeal within a fortnight from the date of the order to the Governor. In the order dated 14.10.1996 there was also some other consequential directions as to how the said appeal was to be disposed of within a period of four months from the date of filing of the said appeal.

3. It is not in dispute that within the aforesaid time of one fortnight the Petitioner filed on appeal but the said appeal has not been disposed of within a period of four months from the date of filing of the same. As the appeal was not disposed of within a period of four months from the date of its filing, the Petitioner joined his services in terms of the directions contained in the aforesaid order dated 14.10.1996. In fact learned Counsel for the Petitioner submits that the Petitioner joined his services on 28.2.1997. Both the modification petitions being Interlocutory Application Nos. 653 of 1997 and 654 of 1997 were filed on 6.2.1997 which was prior to the period of four months mentioned in the order.

4. The reason for filing the modification petitions is a communication addressed

from the Principal Secretary to the Governor of Bihar to the Secretary. Department of Water Resources (Irrigation Department), Government of Bihar, Patna stating therein that under the Rules of the Executive Business, it is the Chief Minister who is to dispose of such appeal and not the Governor. As such prayer was made for extension of time for disposal of the departmental appeal.

5. This Court has perused the said communication made by the Principal Secretary to the Governor of Bihar and is unable to agree with the same. In the Instant case the Petitioner is a member of State Engineering Service Class II. On that there is no dispute. It is not in dispute that the members of the said Service are governed by Civil Services (Classification, Control and Appeal) Rules. Those rules were framed prior to the framing of the Constitution and during the days of the British Government. After framing of the Constitution, these Rules have been adopted as the Rules framed under Article 309 of the Constitution. This position in law is not in dispute. Therefore, this Civil Services (Classification, Control and Appeal) Rules have the status of Rules being framed under Article 309 of the Constitution. Any rule framed under Article 309 of the Constitution is legislative in character under the said rules, the Petitioner has a right of appeal under paragraph 57(5) and if such an appeal is filed, the same has to be disposed of by the Governor. So in the matter of rights of the Petitioner under the said rules, the Rules of Executive Business have no manner of application. Therefore, this Court is of the view that the appeal of the Petitioner should have been disposed of by the Governor himself as an appellate authority under the said Rules.

6. But since there was a bonafide confusion as would appear from the modification petitions, this Court grants further extension of time for a period of three months from today permitting the Governor to dispose of the appeal of the Petitioner in the manner as indicated in the order dated 14.10.1996.

7. It is true that as a result of non-disposal of the appeal and in view of the consequences indicated in the said order dated 14.10.1996 the Petitioner has joined his services and is continuing as such since 28.2.1997, the Petitioner will also continue to work but his continuance in service will abide by the result of the appeal which will be decided by the Governor in the manner as indicated above. If the appeal is not disposed of within the extended period as aforesaid, the consequences mentioned in the order will follow and it is also made clear that no further extension of time will be granted in the matter of disposal of the appeal by this Court.

8. Both the interlocutory applications are thus disposed of.

9. Let a copy of this order be handed over to the learned Counsel for the Respondents for its onward transmission.