

(2011) 05 PAT CK 0128
In the Patna High Court
Case No : CWJC No. 3273 of 2011

Satish Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Citation : (2011) 4 PLJR 104

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.N. Singh, J.—It appears that under the orders of the Central Government, contained in its letter dated 20.2.2007, petitioners services were allocated to the Jharkhand State. Petitioner submitted a representation against that allocation on the ground that his wife was suffering from cancer in abdomen and his father was 90 years of age and his children were very young. Hence, he requested for reconsideration of his case for retaining his services in Bihar. His representation was referred to the State Advisory Committee which, in turn, referred it to the Government of India, Ministry of Personnel, Public Grievances and Pension. It was considered in the Ministry and by letter dated 24.8.2007, as contained in Annexure-8, the State Advisory Committee was advised to request the petitioner to submit a medical certificate in respect of his wife from State Medical Board in support of the claim of treatment of his wife and was requested to furnish some documents and other details to the Ministry. Accordingly, the said request was forwarded to the parent Department of the petitioner i.e. Food and Consumer Protection Department which, in turn, by letter dated 23.7.2008, as contained in Annexure-9, requested the Civil Surgeon-cum-Chief Medical Officer, Patna to constitute a Medical Board, examine the wife of the petitioner and submit a report. The Medical Board was constituted and wife of the petitioner appeared before the Board. However, the report was not received in the Department of the petitioner for quite sometime. Hence, by letter dated 14.7.2010, as contained in

Annexure-11, the Civil Surgeon was again requested to furnish the report of the Medical Board.

2. Learned counsel for the petitioner submits that the report has not been submitted as yet. However, by the impugned order, as contained in Annexure-2, in reference to the original order of allocation of his cadre in 2007, the parent Department of the petitioner has relieved him with effect from 31.1.2011.

3. Learned counsel for the petitioner submits that, since the request of the petitioner for retaining his services in Bihar was entertained by the Ministry and request had been made by the Ministry to the State Advisory Committee to obtain a medical certificate from the petitioner in respect of his wife and send the same alongwith other documentary evidences and information to the Ministry for reconsideration of the case of the petitioner, the original order of his transfer could not be given effect. He submits that till the Medical Board submits its report and the same is forwarded to the Ministry alongwith other information and decision is taken on the same, petitioner should not have been relieved.

4. A counter affidavit has been filed in this case sworn by Under Secretary, Food and Consumer Protection Department. Except for the statement that the representation of the petitioner filed against his original transfer order was referred to the General Administration Department through letter no. 1504 dated 25.4.2007, nothing useful is stated therein. It is only said that the General Administration Department had issued directions to the Food and Consumer Protection Department to relieve the employees in whose respect transfer orders had already been issued. In the light of the said directions of the General Administration Department, petitioner has been relieved.

5. Learned counsel for the respondents submits that though it is true that the petitioner had filed his representation which was referred to the General Administration Department as far as back in 2007, but there was no stay order to his original transfer by any authority at any level.

6. Learned counsel for the Jharkhand State appears and submits that the matter of the petitioner is essentially to be considered by the authorities of the State of Bihar.

7. From Annexure-8, the letter of the Ministry of Personnel, Public Grievances and Pension, Government of India addressed to the Member, State Advisory Committee, it is clear that the representation of the petitioner was entertained by the Ministry and the State Advisory Committee was asked to request the petitioner to submit a medical certificate from State Medical Board in respect of ailment of his wife and furnish the same to the Ministry alongwith other information and documentary evidences. Pursuant to this letter, Medical Board was constituted and the wife of the petitioner was examined. These developments show that the representation of the petitioner was under active consideration. Hence, even if there was no formal stay by any authority on the original transfer order of the petitioner, it was appropriate for the General

Administration Department to take into consideration the said developments in respect of the petitioner and stay his transfer till final decision was taken.

8. In the circumstances, this Court finds that the petitioner should not have been relieved by his parent Department till final decision was taken on his representation by the Ministry, which admittedly has not been taken till now.

9. In the circumstances, this writ application is allowed. The order of the Food and Consumer Protection Department, contained in memo no. 451 dated 24.1.2011, relieving the petitioner with effect from 31.1.2011, is quashed and the petitioner is held entitled to resume his duties on the post under the Department and for his full salary from the date he submits his joining.