
(2001) 03 PAT CK 0096
In the Patna High Court
Case No : C.W.J.C. No. 421 of 2001

Shailendra Kumar Pathak

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Citation : (2001) 2 PLJR 614

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh and B.K. Dubey, for the Appellant; Ganga Prasad Roy for the State, for the Respondent

Judgement

Aftab Alam, J.—The petitioner was posted as Executive Engineer (Civil), Don Canal Division, Ramnagar, West Champaran under Water Resources Department, Government of Bihar. By a notification, dated 26.12.2000 (Annexure 2) by which a number of officers were shifted from one place to another, the services of the petitioner were handed over, due to administrative exigencies, to the Rural Development Department of the Government which will now give him a proper posting. This writ petition has been filed by the petitioner challenging his transfer/handing over his services to another Government department. Mr. Ganesh Prasad Singh, learned Senior counsel appearing in support of the writ petition assailed the transfer order on the following two grounds:

(i) The transfer from one Government Department to another involved cadre transfer which was impermissible in law; otherwise it amounted to sending the petitioner to another Government Department on deputation which could be done only with his express consent.

(ii) In the counter affidavit filed on behalf of the respondent authorities a number of allegations were made against the petitioner the substance of which was that the petitioner was quite inefficient in his present posting. Any transfer on grounds of inefficiency, according to the learned counsel, was barred by the

provisions contained in rule 56(a) of the Bihar Service Code.

2. Taking up the second ground first for consideration, I find that the submission is quite misconceived and stems from a complete misreading of the rule in question. Rule 56 of the Service Code by no means prohibits transfer on account of inefficiency. Rule 56 is as follows:

56. (a) The State Government may transfer a Government servant from one post to another; provided that, except:

1) on account of inefficiency or misbehaviour, or

2) On his written request, a Government servant shall not be transferred substantively to, or except in a case covered by rule 103 appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien, and his lien not been suspended under rule 70.

b) Nothing contained in clause (a) of this rule or in rule 28, shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of rule 70.

3. On a plain reading the afore-quoted provision simply means that in case transfer is made on grounds of inefficiency or misbehaviour or on the written request of the concerned employee, the transferee may even be substantively transferred to or asked to officiate in a post carrying less pay than the pay of his permanent post but in case the transfer was for any reason other than the aforesaid three reasons, the transferee cannot be substantively transferred to or asked to officiate in a post carrying less pay than the pay of his permanent post.

4. I, therefore, see no substance in the second point raised for challenging the petitioner's transfer.

5. Coming now to the first point Mr. Singh contended that transfer from one Government Department to another Government Department amounted to transfer from one cadre to another which was impermissible in law. In support of his submission, he relied upon a number of decisions of the Supreme Court and this court such as reported in *Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others*, .

6. Normally the submission is well founded and there should not be much difficulty in accepting it but the facts of this case are slightly different and in the special facts of this case the objection on the ground of cadre transfer does not seem to have any application.

7. It is to be noted that in a meeting chaired by the Development Commissioner on 23.6.1997 a resolution was taken to transfer from other Government Departments, including the Water Resources Department a number of Divisions, Circles and some other offices to the Rural Development Department along with the personnel posted in those Divisions, Circles, offices etc. The resolution, dated

23.6.1997 received the approval of the Council of Ministers and was followed by notification, dated 23.5.1998 by which the transfer of the Divisions, Circles and other offices to the Rural Development Department was made effective.

8. In the counter affidavit filed on behalf of the respondents it is stated in this regard as follows:

13 it is stated that 63 nos. of Divisions, 14 Circles and two Chief Engineer's offices of Water Resources Department have been transferred to the Rural Development Department vide Departmental Notification No. 1320 dated 23.5.1998 and for the posting against these vacancies no prior requisition of the Rural Development Department or the consent of the incumbent is at all required.

9. Copies of the resolution, dated 23.6.1997 and the notification, dated 23.5.1998 are at Annexures "D" and "E" respectively.

10. In clause 6 of the notification, dated 23.5.1998 it was provided as follows:

HASTANTRIT KARMIYO PAR PURAN PRASHASHNIK NIYANTRAN GRAMIN VIKAS KA TATHA IS KI PARKRIYA EWAM VEYAWASTHA WAHI HOGI JO JAL SANSADHAN (LAGHU SINCHAI) VIBHAG KE KARMIYO KE SAMBANDH MAIN JAL SANSADHAN WIBHAG KI HAL ADHIKSHAN ABHIYANTA, KARYAPALAK ABHIYANTA, SAHAYAK ABHIYANATA EWAM KANIYE ABHIYANTA KI PARTINIYUKTI AWADHI KRAMSHA 3 WARSH, 6 WARSH, 6 WARSH EWAM 9 WARSH HAI, AIYESE HASTANTRIT PADADHIKARION EWAM KARAMCHARIYO KI AAPSI WARIYATA JAL SANSADHAN WIBHAG MAIN SANHARIT ANUKRAM SUCHI KE ANUSAR HI RAHE GI. IN KARYALKAYO KE RIKT PAD PAR KEWAL JAL SANSADHAN WIBHAG KE PADADHIKARI/KARMCHARI SE HI BHARE JAYEN GE.

11. It was on the basis of the aforesaid stipulation made in clause 6 of the notification that the services of the petitioner have been handed over to the Rural Development Department.

12. It may further be noted here that the Government resolution, dated 23.6.1997 by which it was decided to transfer certain numbers of Divisions, Circles and offices of the Chief Engineers from Water Resources Department to the Rural EGINEERING Department along with their personnel came under challenge before this court in C.W.J.C. No. 4564/1998 and this court is yet to render a final decision on that issue. That writ petition was admitted for hearing on 13.4.1999 and remains pending before this court. In that case the following interim order was passed on 7.9.1998:

Having regard to the facts of the case, the only interim order that can be passed in this writ petition is that by transfer affected under Annexure 1, the lien of the officers concerned will not be adversely affected and they shall not be deemed to have been transferred to any other cadres. Their terms and conditions will remain the same as they were before Annexure 1 was passed. The interim order, in the above terms is, accordingly, passed.

13. It is significant to note that in C.W.J.C. No. 4564 of 1998 this court did not stay the transfer of the personnel from the Water Resources Department to the Rural Development Department but gave them certain protections regarding lien, seniority and other conditions of service etc.

14. In these facts and circumstances I do not see that any case is made out for this court to make any interference at this stage with the impugned order by which the services of the petitioner are handed over to the Rural Development Department. This writ petition is, therefore, disposed of with the observation that though this court at this stage makes no interference with the petitioner's transfer to the Rural Development Department, the impugned order will be subject to the final result of C.W.J.C. No. 4564 of 1998 and the interim protection allowed to the petitioners in that case will be equally available to the present petitioner. The Rural Development Department will now give suitable posting to the petitioner forthwith and without any delay.