

(2018) 04 PAT CK 0013

In the Patna High Court

Case No : Letters Patent Appeal No.1234 of 2017

Shashi Bhushan Kumar

APPELLANT

Vs

The Union of India & Ors

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Citation : (2018) 04 PAT CK 0013

Hon'ble Judges : Rajendra Menon;Rajeev Ranjan Prasad

Bench : Division Bench

Advocate : Anjani Kumar;. S.D. Sanjayh;Alok Agrawal;

Final Decision : Disposed Of

Judgement

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Rajeev Ranjan Prasad, J

1.Challenging the judgment dated 04.08.2017 passed in CWJC No. 6884 of 2017 the original writ petitioner has moved this Letters Patent Appeal.

2.By the impugned judgment the learned Writ Court has refused to interfere with the speaking order dated 07.04.2017 passed by the Registrar, Central University of South Bihar

(hereinafter referred to as "the Central University?"). By the impugned order dated 07.04.2017 passed by the Registrar of the Central University, the petitioner who was

appointed as Internal Audit Officer on deputation to the Central University was repatriated to his parent organization, i.e., the Finance Department of the Government of Arunachal

Pradesh, Itanagar with all consequential benefits.

3.The learned Writ Court considered the impugned order dated 07.04.2017,

which was brought on record as Annexure-10 to the Writ Application, framed certain questions,

particularly as to whether the order is mala fide and is an outcome of the interaction in between the petitioner and the Registrar and whether the order of repatriation is without any

notice or hearing to the petitioner and thus is violation of the principles of natural justice.

4. Having heard learned counsel for the parties and taking into consideration the materials available on the record and upon discussions made thereon, the learned Writ Court

rejected the contention of the learned counsel representing the petitioner that even in the case of repatriation on unsatisfactory performance ground the incumbent would be entitled

to a notice as has been held by this Court in the judgment rendered in CWJC No. 6235 of 2017 (Lallan Kumar Pandey @ Lalan Kumar Pandey Vs. The Ministry of home Affairs,

Govt. of India). The learned Writ Court held that the appointment order of the petitioner very clearly provided that the service of the petitioner shall be governed by the Act,

Statutes and Ordinances of the University and thus it is the ½ Central University of South Bihar, Cadre Recruitment (Non-Teaching Employees) Rules, 2016? (hereinafter referred

to as ½ the Rules, 2016?), present at Annexure-R4/A, which would apply and the same will regulate his deputation and not the Office Memorandum dated 17.06.2010 which,

according to the petitioner, deals with the case of deputation of Central Government employees to ex-cadre posts under the Central Government, State Government, Public Sector

Undertakings, Autonomous Body, University, Union Territory Administration, Local Bodies, etc. and vice versa.

5. Since the learned Writ Court refused to set aside the impugned order, the writ petitioner in appeal before us contended that the learned Writ Court could not take into

consideration the submission of the learned counsel for the petitioner that the speaking order as contained in Annexure-10 to the Writ Application casts stigma upon the petitioner

and, therefore, while issuing such order, as contained in Annexure-A/10, if the petitioner was not heard, the same is liable to be set aside.

6. In the preliminary hearing itself even though Mr. S.D. Sanjay, learned Senior Advocate and Additional Solicitor General representing the respondents attempted to defend the

order dated 07.04.2010, as contained in Annexure-10, we had taken a prima facie view that the impugned order does cast a stigma upon the petitioner inasmuch as not only in

several paragraphs the performance of the petitioner has been declared unsatisfactory, in one of the paragraphs, it has been stated, inter alia, that the appointment of the petitioner as

an IAO on deputation has not resulted in the development of a functional and robust Internal Audit System; rather there are enough evidences and reasons to establish that his

presence and conduct has spoiled the organizational working atmosphere.

7. Mr. Anjani Kumar, learned Senior Advocate representing the petitioner contended before us that the speaking order dated 07.04.2017, as contained in Annexure-10, is stigmatic

and is liable to be set aside. It was indicated to Mr. S.D. Sanjay, learned Senior Advocate, who having noticed the difficulty in sustaining the speaking order dated 07.04.2017

(Annexure-10 to the Writ Application) had sought time to seek instruction on this point. It appears at this stage that respondent has passed a modified order during pendency of this

appeal, the appellant by filing an Interlocutory Application being I.A. No. 1292 of 2018 has brought on record the modified speaking order as contained in letter no. RS/22/2018

dated 09.02.2018, issued under the signature of the respondent Registrar, Central University of South Bihar, whereby and whereunder the earlier speaking order no.

CUSB/ESTT/NT/219/25/16 dated 07.04.2017 which was the impugned

order is hereby modified to the extent that Para 9 & 10 of the said impugned order has been redrafted even though maintaining

its effectiveness w.e.f. 07.04.2017. The petitioner-appellant has brought this modified order on the record by Annexure- I/1 to the Interlocutory Application

and has sought to challenge the same.

8. In view of the developments which took place during the pendency of the appeal and upon going through the modified speaking order dated 09.02.2018 we find that Para 9 & 10

of the earlier impugned order dated 07.04.2017 has been deleted to the extent indicated in Para 13 of the modified order and these two paragraphs have been redrafted as under:-

Pr. 9 : Whereas, the Notings and observations of the Registrar about the IAO was also considered the performance at the work of IAO was not found satisfactory.

Pr. 10 : NOW, therefore having considered the above facts, reports, notings and observations of Statutory Officers about the IAO, the Competent Authority in its considered view;

is of the opinion that appointment of Sri S. B. Kumar as an IAO on deputation has not resulted in development of a functional and robust internal Audit System and therefore not

desirable to continue him and thereby to repatriate him prematurely to his original post.

9. At this stage, learned Senior Counsel representing the appellant submits that because order has been made effective from 07.04.2017 itself he apprehends that on his joining in his

parent organization, he may lose his continuity in service as also other consequential benefits. Learned Senior Counsel also submits that in the given facts and circumstances of the

case where the petitioner was prosecuting his remedy before this Court against the impugned order he would be entitled for his salary and emoluments for the period he remained

without work. A further apprehension has been expressed that if the modified order is made effective from 07.04.2017, the petitioner may be charged for not joining in his parent

organization pursuant to his repatriation vide the impugned speaking order dated 07.04.2017 as contained in Annexure-10 to the Writ Application.

10. Mr. S.D. Sanjay, learned Senior Advocate and Additional Solicitor General of India submits that the deputation period of the petitioner-appellant is even otherwise coming to an

end in April, 2018 itself and in the given facts and circumstances whereunder this

Court had earlier taken a prima facie view against the impugned order as contained in Annexure-

10 to the Writ Application, the respondents would not deprive the petitioner-appellant from continuity in service and further no disciplinary proceeding is likely to be taken up for the

only reason that he did not join his parent organization pursuant to the speaking order dated 07.04.2017.

11.Learned Additional Solicitor General further submits that the petitioner has not worked either in the present Central University or in his parent organization and, therefore, in his

case the principle of "No Work No Pay" shall apply. In order to buttress his point on this issue as to non-payability of salary for the petitioner-appellant did not work, the learned

Additional Solicitor General has placed before us the office order dated 07.04.2017 as contained in Annexure-11 to the Writ Application and submits that on perusal of Annexure-

11, which is an office order repatriating the petitioner to his parent organization, it could appear that in the said office order (Annexure-11) there was no stigmatic statement and the

appellant should not have any difficulty in submitting his joining in his parent organization. He also submits that the office order no. 64/2017 dated 07.04.2017 nowhere refers to the

speaking order as contained in Annexure-10 to the Writ Application and, therefore, Annexure-10 could have been challenged even after submitting his joining in the parent

organization.

12.Having heard learned Senior Counsel representing the petitioner-appellant and learned Additional Solicitor General, we are of the considered opinion that in view of the issuance

of the modified speaking order as contained in Annexure-I/1 to the Interlocutory Application filed on behalf of the petitioner, the grievance of the writ petitioner "the appellant has

been redressed and the stigmatic part of the speaking order dated 07.04.2017 as contained in Annexure-10 to the Writ Application has been removed by the respondents.

13.In the peculiar facts of the case we set aside the impugned order dated 07.04.2017 (Annexure-10 to the Writ Application) as the same has already been replaced by the

modified speaking order. We are in agreement with the submission of Mr. S.D. Sanjay, learned Additional Solicitor General that in the fact of the case the petitioner is ½ appellant

would not be entitled for salary for all these periods because he has not worked either in the Central University or in his parent organization. Since there was no stay of the impugned

order (Annexure-10 to the Writ Application) or the office order (Annexure-11 to the Writ Application) there was no difficulty on the part of the petitioner-appellant in submitting his

joining in his parent organization while contesting the stigmatic part of the order as contained in Annexure-10 to the Writ Application. In our considered opinion, the principle of

is ½ No Work No Pay? shall apply in the facts of the present case.

14. We, however, record that the petitioner-appellant shall be entitled to his continuity of service and consequential benefits thereof, if any, except salary. Further, as submitted at the

Bar, no disciplinary proceeding shall be initiated against the petitioner-appellant only for the reason of not joining his parent organization pursuant to the office order as contained in

Annexure-11 to the Writ Application.

15. The Letters Patent Appeal and the Interlocutory Application being I.A. No. 1292 of 2018 are allowed to the extent indicated here-in-above and the impugned judgment of the

learned Writ Court is modified accordingly.

16. The Letters Patent Appeal as well as all other Interlocutory Applications which are on the records stand disposed of accordingly.