
(2007) 11 PAT CK 0006
In the Patna High Court
Case No : CWJC No. 4102 of 2007

Shila Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Citation : (2009) 2 PLJR 821

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : S.D. Sanjay, for the Appellant; Santosh Kumar Singh, for the Respondent

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner is posted as an assistant teacher in the Girls High Schools, Jamalpur. Her grievance is that despite the exercise of option by her under the Bihar High Schools Service Conditions (Amendment) Rules, 2006 for a posting of her choice at Bhagalpur, she has been denied consideration. The Rules also stipulate preference to ladies. Ignoring the same respondent No. 6 has been posted at the Krishnanand Suryamal High School, Sultanpur, Bhagalpur. Earlier respondent No. 6 was posted at the High School, Kathara, Kumarpur at Bhagalpur.

2. A counter affidavit has been filed on behalf of the respondents. It urges that respondent No. 6 had given his application for voluntary transfer as per his choice and he has been posted accordingly. The option stated to have been exercised by the petitioner was submitted before the Director, Secondary Education, Bihar, Patna of which the Department was unaware for which reliance is placed on the pleadings of the subsequent developments made in Para-11.

3. A supplementary affidavit has been filed on behalf of the petitioner. She moved under the Right to Information Act. The reply given by the official respondents in Clause-5 at Annexure-7 states that steps have been taken to

cancel the transfer of respondent No. 6 since he had been posted in absence of any vacancy. To that extent the bottom is knocked out of the claim of the petitioner. All that remains for consideration now is the option stated to have been exercised by the petitioner. It is well settled law that exercise of the option itself creates no rights so as to found a cause of action upon the same.

4. All that it entitles is the opportunity to represent. The matter remains within the discretion of the authorities. The only ground urged on behalf of the petitioner is availability of vacancy. Considering the legal position with regard to the exercise of such option the Supreme Court in 1999(1) PLJR (SC)5 (State of Bihar vs. Kaushal Kishore Singh & Ors.) in the relevant extract at paragraph has held:-

"...Even if options were called for and given, it is not mandatory for the Government to accept options of the candidates and make appointment to the post. Asking for option of candidate is only a discretionary matter and the Government is not bound to select the candidates on the basis thereof. Under these circumstances, the candidates who applied for, though opted for, have no acquired rights, much less inalienable and absolute right for selection or appointment to a particular post...."

5. This Court therefore finds no merit in this writ application. It is accordingly dismissed.

6. The notification dated 5.8.06 framing the aforesaid Bihar Government High School Services (Amendment) Rules, 2006 states that the present system of transfer and posting was affecting education and hence the need for a fresh policy. The policy in Clause-2 provides that applications for choice postings may be submitted by the teachers.

7. Posting on the employees' choice militates against the basic tenets of service jurisprudence. It is always a matter of discretion of the employer, to be taken in the best interest of the administration.

8. Quite to the contrary, the Rules invite an application from the teacher for a posting of his choice. Hopes having been aroused, he then is expected to make rounds of the corridors of the Secretariat, to have his request acceded to. The ways and means of acceptance of the request may be myriad, not divorced from the realities of life. The inevitable result is that the teacher absents himself from the class room, which is what the policy purports to redress. An industry of transfer and postings is thus created. This Court therefore queried from the State Counsel with regard to this aspect of the policy. Learned counsel for the State had no answer to the same, except that it was a policy of the Government.