
(1990) 05 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1953 of 1990

Shiva Kumar Singh

APPELLANT

Vs

Bihar State of Electricity Board and Others

RESPONDENT

Date of Decision : 17-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)

Citation : (1992) 1 PLJR 766

Hon'ble Judges : P.S. Mishra, J;B. Prasad, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyay and Ambar Nath Banerjee, for the Appellant;
S.R. Alam, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra and B. Prasad, JJ.—Long and short of the instant case is that the Petitioner who was on leave as the Electrical Executive Engineer in the Bihar State Electricity Board was transferred and posted as Electrical Executive Engineer, Technical Services, Ranchi vide notification No. 431 dated 6.3.1990. According to the Petitioner he joined in the forenoon on 7.3.1990 but soon thereafter by the impugned order dated 21.3.1990 vide notification No. 525 he was transferred but since thereafter Shri Jai Kishore Chaudhary who was previous incumbent of the said post who by notification No. 432 dated 6.3.1990 has been transferred and posted as P.A. to Electrical Superintending Engineer, Electrical Circle, Ranchi was retransferred vide notification No. 524 dated 21.3.1990 as the Electrical Executive "Engineer, Technical Services, Ranchi and his posting as P.A. to Electrical Superintending Engineer, Electrical Circle, Ranchi has been cancelled. Petitioner has impugned the said order. Shri Chaudhary had questioned the validity of the order as contained in Annexure-2 dated 6.3.1990 by filing a writ application before the Ranchi Bench of this Court being C.W.J.C. No. 493/90(R). The same was heard on 15.3.1990 and permitted to be withdrawn, as prayed for, to enable him to seek relief departmentally, if

available. It appears, however, that some sort of typed note undated and unsigned was brought before the Minister Incharge Department of Energy, Government of Bihar on 21.5.1990. The Minister on that made a note that Shri Chaudhary's transfer was premature from the post of Electrical Executive Engineer, Technical Services, Ranchi. The said note of the Minister Incharge of the Department of Energy was thus placed before the then Chairman of the Bihar State Electricity Board on 20.3.1990. On that the Chairman ordered that action be taken as desired forthwith. The impugned order thereafter was issued on the following date, that is to say, ON 21.3.1990. No counter affidavit has been filed on behalf of the Respondent-Electricity Board or any of its officers. Shri Chaudhary has filed a return. He has not disputed the fact that the Minister, Department of Energy did pass some order. He has, however, stated that Petitioner did not reveal the fact that he too was given post and posted as P.A. to Electrical Superintending Engineer, Electrical Circle, Ranchi after Shri Chaudhary was transferred and reposted as Electrical Executive Engineer, Technical Services, Ranchi. He has said that a comparative study of the case of the Petitioner with that of Shri Chaudhary will reveal that Petitioner has shown reluctance to leave Ranchi and when he was transferred from Ranchi he remained on leave and did not join only awaiting that he could manage the posting at Ranchi. He has also alleged that the Petitioner has stayed at Ranchi for a period longer than the total of Shri Chaudhary at Ranchi. Shri Chaudhary had not completed the period of three years at Ranchi and that he had good cause to represent before the departmental authority. He did file representation and it cannot be said that it was Minister's order which prevailed and no decision taken by the Chairman of the Board on the representation of the Petitioner.

2. In the instant case there may be a reason to think that Shri Choudhary was transferred prematurely and he genuinely entertained a grievance against which he first moved the High Court and thereafter moved department-ally representing to the competent authority. Still it is not possible to hold that Minister's order played no role. The events that took place clearly show that a typed note which was undated and unsigned was placed before the Minister and when it was moved out of the office of the Minister, reached office of the Chairman, the Chairman passed order on the following day and notification retransfer-ring Shri Chaudhary to the post held by the Petitioner was issued. This Court has following the judgment of the Supreme Court, held that an order of transfer which is passed on extraneous and irrelevant consideration or is affected by interference by some one who does not have any role to play in the hierarchy of the officers and rules of business do not authorise such person, is inflicted by malice in law. The order as contained in Annexure-1 for the reason aforementioned is clearly hit by the principle of mala fide in law.

3. learned Counsel for the Respondent, however, has submitted that this Court should refuse to entertain the Petitioner's application for the reason that he has not come with clean hands. He has suppressed the material fact that he had stayed at Ranchi for a period longer than that of Petitioner and that

notwithstanding the said fact when he was shifted from the post of Executive Engineer he was still retained at Ranchi as P.A. to Electrical Superintending Engineer. We are not considering the validity of the order transferring the Petitioner from the post of Electrical Executive Engineer to that of P.A. to Electrical Superintending Engineer. Still we cannot resist observing, it was only on account of Shri Chaudhary vacating the post of P.A. to Electrical Superintending Engineer and his having been accommodated as Electrical Executive Engineer in the post held by the Petitioner that the Petitioner was again accommodated to create a vacancy for Shri Chaudhary in the post of Executive Engineer at Ranchi.

4. learned Counsel has, however, submitted that even if there is any defect in the impugned order this court's interference at the first hearing of the application for admission on 4.4.1990 by an order of stay stood vacated for the reason the principles of law engrafted in Article 226(3) of the Consitution of India. learned Counsel has submitted that as required therein he made an application for the vacation of the order of stay after furnishing a copy of the said application to the Petitioner on 30.4.1990. The said, application was required to be disposed of within a period of two weeks from the date on which it was received or from the date on which a copy of the said application was furnished to the counsel of the Petitioner which ever was later. That having been not done the order of stay automatically stood vacated after the expiry of the period of 14 days from the date of the said application.

5. In the instant case we would have examined, this contention somewhat closely had we not decided to dispose of the application finally today. We may, however, observe that it is difficult to accept that the rule engrafted in Clause 3 of Article 226 of the Constitution is mandatory. The rule no doubt is a rule of substance and is required to be observed. The court's constraints, however, are many applications which are listed for admission or for hearing remain so listed for months or they remain out of the list to accommodate many more cases which stand in a queue for their turn to be listed before an appropriate Bench. While it may be true that a party in default may be saddled with the consequences of noncompliance with the requirements of Clause-3 of Article 226 of the Constitution of India, if on account of paucity of time in the court and delay in the disposal of the matter by the court the interim application is not disposed of it will be difficult to conceive a consequence against the Petitioner. Cases where delays are beyond the control of the parties or even beyond the control of the court cannot be closed for the reasons of such a law. However, since we are disposing of the instant, application finally today any consequences that had occurred will yield to the order that we pass today. The notification as contained in Annexure-1 for the reason aforementioned is without jurisdiction. The same is, accordingly, quashed. As a consequences Shri Chaudhary shall be deemed to be transferred and posted as P.A. to Electrical-Superintending Engineer, Electrical Circle, Ranchi until transferred again in accordance with law. Petitioner for the said reason will be deemed to be continued as Electrical

Executive Engineer, Technical Service, Ranchi without any break until transferred in accordance with law.

6. Respondents have suggested that the order transferring the Petitioner as the Executive Engineer (Annexure-2) is also illegal. Whether that order is illegal or not but assuming that the order is illegal we consider as to what consequences may follow. Either both the orders are allowed to stay or both are quashed. We do not do so in the instant case for the reason that only two weeks ago of the impugned order of transfer for the reason whatsoever both Petitioner and Shri Chaudhary were given their respective post in Ranchi one as the Executive Engineer and other as P.A. to the Electrical Superintending Engineer. By the impugned order and as follow up of the impugned order they were made to interchange their position. We have already said that, that was done for no other reason except to accomodate Shri Chaudhary as the Electrical Executive Engineer.

7. Before we part with this case, we may add that Board shall show more concern to the rule of law and respect the conditions of service of its employees by showing obedience to the principle of law that all employees should be subjected to same or similar considerations. If an employee who stayed at one station for a longer period is not transferred but one who is posted for one week or two shifted to another station a sense of frustration would start percolating and affecting the vitals of the service establishment When we say so, we do not intend to restrict the powers of the competent authority in the Board to transfer its officers for the reason of administration or in the public interest at any time. But in all cases of transfer in the public interest or for the reason of administration there has to be some reason of the public interest or for administration in existence. Without any such reason of administration or public interest demanding a premature transfer the order would be bad in law.

8. In view of our above the impugned order as contained in Annexure-1 is quashed Respondent are accordingly directed to treat the Petitioner as the Electrical Executive Engineer posted pursuant to Annexure-2 and containing in the said capacity until retransferred in accordance with law.

The application is, accordingly, allowed.