
(2003) 09 PAT CK 0054
In the Patna High Court
Case No : C.W.J.C. No. 6750 of 2003

Shyamanand Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Citation : (2003) 4 PLJR 389

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : A.K. Jha, for the Appellant; Rajeshwar Prasad, for State, P.K. Shahi and Nadeem Seraj for Respondents No. 7, for the Respondent

Judgement

R.S. Garg, J.—The Secretary of the Rural Development Department and the Secretary of Personnel and Administrative Reforms Department has made an application that because of some religious function he is unable to attend the hearing. Mr. P.K. Shahi appears for the Respondent No. 7. After a great deal of discussions for almost about 20 minutes with both the Secretaries, I am unable to find out what really they want this Court to do. The Secretary Rural says that the Petitioner wants to continue at Sabour and for that only reason he is creating all these problems despite the order dated 20.6.2003 posting the Respondent No. 7 in place of the Petitioner. When this Court asked him that any transfers and posting order against the Petitioner was ever issued by his Department, the said Secretary says that even if such orders are not issued the Petitioner should have handed over the charge, could have reported to the Department's head i.e. the Secretary and within 15 days in accordance with the rules of business his posting orders could be issued.

2. When this Court asked the Secretary, Rural that why posting orders were not issued since after 20th June, 2003 and why the Secretary, was awaiting the report of the Petitioner that he was relieved and was reporting back to the Department the Secretary now says that he mooted a proposal and the same is pending consideration before the concerned minister.

3. Undisputedly the Petitioner is holding the charge of Circle Officer, Sabour. The Respondent No. 7 under the orders dated 30.6.2003 has to take charge of the office of the Circle Officer, Sabour, if the Respondent No. 7 is to replace the Petitioner then the Petitioner must be given some place of posting. The Departmental heads can not act like ostrich by closing their eyes and feeling that none is seeing them. It is most unfortunate that no action was taken despite submission of this Petition on 21.7.2003. If the Secretary Rural is right and is earnestly saying that within 15 days an order could be passed then order could have been passed by him immediately after filing of the petition was informed to him.

4. I fail to understand in what manner the Government is being run. It is becoming rampant in this State that there is no synchronization and cooperation between the Secretaries of different Departments. Even the Secretaries do not know that at what place they had the vacancies so that a particular man may be posted and transferred. Of late I am seeing that a man is transferred to place but the replaced man is not given any order of posting and if order of his posting is given to him at the transferred post/place he is not being allowed to join on the ground that there is no vacancy.

5. Would it not be advisable for the State and the Secretaries running the Government to call for the reports from the different places before issuing the transfer orders so that a person under the transfer order joins at a place at a clear vacancy and is not required to report back to the Departmental head, touch his feet and make a folded hand prayer that some posting orders may be issued in his favour.

6. On 21.7.2003 the petition was filed. It is said that on 23.8.2003 the Secretary has referred the matter to the concerned Minister for issuing/approving the orders of transfer and posting of the present Petitioner. He says that he still needs one week so that orders of posting and transfer of the Petitioner are issued. I must say and record my displeasure against the working of the State in the Secretariat. This statement I am not making against one or the other Secretary but for last sometime I have been observing that on the request of one Minister to another the orders are stayed, the orders are cancelled and recalled, fresh orders are issued, the blue eyed baby of one Minister is given posting at a particular place and the orphan in the service is being thrown to another place. Is this the governance in the State? Is this the Government in the State? It appears that the State is failing in its duties in every field and even in making the posting and transfer of the subordinate officers.

7. A Secretary/Head of the Department must understand the plight and peril of such officer who is being replaced but is not given any posting orders. How would he himself feel when he is being shunted from the office but is not being given the posting in any such office, if he will feel bad of it then he must put himself in the position of the subordinate officer and try to appreciate his perils.

8. I have been repeatedly asking the State Government and Secretaries and the Chief Secretary to look into the matter but it appears that they are not hard skinned like Rhinoceros but are now having bullet proof skin and nothing can pierce it. It is necessary for this Court to make a request to His Excellency the Governor to look into the matter and issue necessary notices to the concerned Department because His Excellency the Governor is Head of the Executive.

9. The matter be taken up after one month. Let a copy of this order be sent to His Excellency the Governor of Bihar.

10. The Respondent No. 7 has already been relieved from his earlier posting and has come to Sabour, as the present Petitioner is continuing as Circle Officer, Sabour, the Respondent No. 7 may or may not be given any work by the concerned District Magistrate but in any case the State Government would be obliged to make payments of his salary to him in accordance with law because respecting the orders of the State Government, Respondent No. 7 has handed over the charge of his earlier place and has now come to Sabour. The Secretaries of the concerned Departments are hereby forwarded that if the salary of the present Respondent No. 7 is not paid to him in accordance with these directions then they are exposing themselves to a serious risk. The due salary must be paid to him within 10 days from today.

11. Put up after one month in the same list.