

(2001) 12 PAT CK 0026
In the Patna High Court
Case No : L.P.A. No. 1449 of 2001

Smt. Anju Das Gupta and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Citation : (2002) 1 PLJR 357

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kumar Singh, J

Bench : Division Bench

Advocate : S.P. Srivastava, for the Appellant; J.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. The petition was filed by the two Appellants basically on the ground to resist the order of transfer. One Appellant Smt. Anju Das Gupta has been posted at Motihari for the last 16 years. The other Appellant Smt. Meera Rani Das Gupta has been posted at the same station for the last 10 years. They had filed a writ petition earlier also. Resisting the transfer was camouflaged on legal pleas that it may certify that their postings, hitherto indicated as non-sanctioned posts, in fact are sanctioned posts, and this may not be a ground for transfer. The going was good till it lasted. The learned Judge deciding the petition noticed the basic fact that the two Petitioners-Appellants, both Nurses Grade I, had been at a particular station for 16 years and 10 years. Thus, he declined to interfere on the writ petition on whatever be the submissions of these two Nurses. The petition was dismissed.

2. The Court has heard learned Counsel for the Petitioners-Appellants on this appeal and has perused the order of the learned Judge dated 2 November, 2001. Suffice it to say that this Court has nothing further to say but wholly agree with the observations of the learned Judge that the Petitioners having served at Sadar Hospital, Motihari for 16 years and 10 years, it is high time that they should now be moved elsewhere. This hint should have been taken by the two Petitioners

and they should have accepted the decision on the writ petition gracefully. But, the Petitioners feel that they would like to litigate further and, thus, have filed the present Letters Patent Appeal.

3. The judgment of the learned Judge has been termed as a perversity and an illegality, and it has been further submitted that the Court which was considering the writ petition has travelled out side the record. Submissions apart, these grounds are in print on the appeal. Initially, the Court had indicated to learned Counsel that the judgment on the writ petition should be permitted to rest. Apparently, the hint of this Court was, also, not taken into account and the submission continues that the judgment is based "on conjectures and surmises". This part also is in print. It is at this stage that the Court reflected upon a situation as to what may be the sin of learned Judge so as to not interfere on the writ petition when Government employees have been posted at a station for 16 years and 10 years.

4. The writ petition is basically a discretionary remedy and if the Petitioners are State employees on transferable posts then it can hardly be said that learned Judge has committed any perversity or illegality or his judgment is based on conjectures and surmises.

5. If the Nurses have remained posted in a particular district for 16 years and 10 years this is an abnormality which should not become a generality by default. The time then has come for the Court to take judicial notice of this fact aberration.

6. In so far as the appeal is concerned, it is laid to rest as this Court also does not desire to interfere with the order of learned Judge who declined to interfere on the writ petition.

7. But the matter now has been noticed judicially in the interest of public, as the health services of the State are part of a social welfare public programme. Thus, this Court called upon Additional Advocate General No. 2, who is looking into the matter of posting of the State doctors with the Department of Health and supply to the Court a list of nurses employed by the State of Bihar who have stayed at a particular station for more than five years. State employed doctors and nurses compliment each other in paramedics to run the health services.

8. Thus, this Court directs the State of Bihar and requests Additional Advocate General No. 2 to have (i) a list of the State employed nurses made out and (ii) supply to the Court a list of those nurses who have remained at a station for more than 5 years.

9. A.A.G. 2, Mr. S.K. Ghose, present in Court, prays that this matter be taken up after one month.

10. Put up on 9 January, 2002 under the heading for orders.

11. A copy of this order may be given to A.A.G. 2 Mr. S.K. Ghose.