
(2000) 02 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 5255 of 1999

Smt. Jyotsna Kumari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

Citation : (2000) 2 PLJR 332

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioner has challenged the order dated 15th May, 1999 (Annexure-11), whereby and where under, the earlier order of transfer dated 13th July, 1998 has been cancelled, related to Petitioner (Jyotsna Kumari) and 7th Respondent Kumari Champa Devi.

2. It appears that Petitioner, an A.N.M. was posted at Primary Health Centre, Paliganj, whereas the 7th Respondent, Champa Devi, was posted at Primary Health Centre, Islampur.

3. Giving reference of request for transfer and orders of Civil Surgeon-cum-Chief Medical Officers, Patna and Nalanda, contained in Memo Nos. 3653 dated 4th July, 1998 and 1621 dated 24th June, 1998, in special circumstances, both the Petitioner and 7th Respondent were transferred, on their request.

4. The Petitioner was transferred to Primary Health Centre, Islampur in place of 7th Respondent, whereas the said 7th Respondent was transferred to Primary Health Centre. Paliganj (Patna), in place of Petitioner. It was mentioned that their seniority in the district cadre will be below the persons who are already in such district cadre.

5. According to the Petitioner, she acted upon the order of transfer dated 13th July, 1998 and joined the transferred post at Islampur on 21st November, 1998.

The 7th Respondent was also relieved from Islampur to join the transferred place at Paliganj (Patna) on 28th August, 1998.

6. Grievance has been made that the Respondents thereafter cancelled the earlier order of transfer affecting the seniority of Petitioner in the district cadre of Nalanda, vide impugned order dated 15th May, 1999.

7. Notices were issued to Respondents, including the 7th Respondent and the impugned order was stayed by this Court on 22nd June '99.

8. Though the Respondent-State appeared and filed counter affidavit, the 7th Respondent did not choose to appear.

9. Counsel for the State submitted that the Respondent No. 7 has not handed over charge of Islampur in spite of the order of the then I/C. Medical Officer and she is still holding the charge. Further, according to the State counsel, the order has been passed on the basis of an application, as was preferred by the 7th Respondent.

10. There is nothing on the record to suggest that the earlier order of transfer dated 13th July, 1998 was interfered by this Court, nor reference of any order of this Court has been shown in the impugned order dated 15th May, 1999. Mere reference of a letter of Civil Surgeon, Nalanda, contained in Memo No. 143 dated 8th February, 1999 and Order No. 577 dated 13th July '98, issued by the Regional Deputy Director, have been cited.

11. So far as non-handing over of charge by 7th Respondent is concerned, the authorities cannot derive any benefit out of the same, the Respondent No. 7 having relieved from Islampur. If in spite of order of transfer and direction of the higher authority, she had not handed over the charge, at best, the authorities should have taken action against her.

12. Now it is a settled law that once an order of transfer issued and acted upon, it spent its force. Thereafter, no substantive part remains to be stayed or rescinded and any order to that effect is redundant.

13. In this context, one may rely on (Unreported) decision of this Court in the case of Mahmood Azam Siddique C.W.J.C. No. 12287/99 and analogous case, disposed of on 12th January, 2000.

14. In the aforesaid background, the order of transfer issued on 13th July, 1998 having acted upon by the Petitioner, the authority had no jurisdiction to cancel the same.

15. This apart, it will be evident from the order dated 13th July, 1998 that the seniority of Petitioner and 7th Respondent was determined in the transferred district cadre. Such decision relating to seniority in the transferred districts cadre having determined, the authorities should not have disturbed the same without notice and hearing the parties, particularly, the Petitioner.

16. For the reasons aforesaid and in view of the fact that the order dated 14th May, 1999 was stayed by this Court, I set aside the same (Annexure-11).

17. The writ petition is allowed with the aforesaid observations.