

(2015) 01 PAT CK 0111

In the Patna High Court

Case No : LPA No. 1150 of 2013 in CWJC No. 3919 of 2013

State of Bihar and Others

APPELLANT

Vs

Vimal Prakash and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 2 PLJR 435

Hon'ble Judges : L. Narasimha Reddy, C.J.;Gopal Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J.

1. The respondents in C.W.J.C. No. 3919/13 filed this Appeal under Clause-X of the Letters Patent, assailing the order dated 15.7.2013, passed by the learned Single Judge. The writ petition was filed by the respondents herein. Briefly stated, the facts are that the respondents were appointed on contract basis as Counselors-cum-Lab Technicians; in the Voluntary Counseling and Testing Centres established by the Bihar State AIDS Control Board, the 2nd appellant, between the years 2003 and 2007; at various places in the State. Their contracts were continued or reviewed, from time to time and the last of such renewals was granted on 22.7.2011 up to 31.3.2012. Though the respondents were appointed at particular places they have been transferred to different places through the orders of the competent authority. In the proceedings dated 22.7.2011, through which the contract was extended, it was mentioned that the respondents shall execute certain agreements, at the place of their initial appointment.

2. The grievance of the respondents was that the appellants; and in particular appellants 2 and 3 were insisting that they must work at the place of their initial appointment, and not the places to which they were transferred, and that the remuneration was not being paid. Another grievance of the respondents was that steps were being taken to appoint fresh candidates; against the posts that were

already occupied by them. With these complaints, they filed the writ petition.

3. The appellants opposed the writ petition by filing counter affidavit, stating inter alia, that the expression "candidates were required to sign the renewal agreement at the place of initial posting" occurring in the order of removal would connote that they had to work at those places, from the date of that renewal. It was also pleaded that since the respondents did not work at the places of the initial appointment they are not entitled for remuneration. Another plea was that it is open to the appellants to make appointments as and when necessity arises.

4. Learned Single Judge allowed the writ petition through order dated 15.7.2013 with certain directions. Hence, this Appeal.

5. Heard Shri Upendra Kumar Singh, learned counsel for the appellants, and Shri Radha Mohan Pathak and Shri Prabhakar Dwivedi, learned counsel for the respondents.

6. The distorted interpretation given by the appellants 2 and 3, to the order dated 22.7.2011, which is otherwise clear and unambiguous, has given rise to this unwanted and avoidable litigation. It is a matter of record that the respondents were appointed as Counselors-cum-Lab Technicians between the years 2003 and 2007. Though their initial appointment was at a particular centre, they have been transferred to various places. The same is evident from the order dated 19.3.2008 which discloses that the technicians were transferred not only within the district but even outside the district.

7. The renewal of the contract was done on 23.7.2011 up to 3.3.2012. Obviously, because the original contract was executed at the place of initial appointment, it was directed that the renewal agreement shall also be executed at the same place, i.e. the place of initial appointment.

8. In the proceedings dated 27.3.2011 it was not mentioned that the respondents shall work at the place of their initial appointment; and not at the place to which they have been transferred. It is also essential to note that the transfer orders were issued by different authorities. In some cases, they were made from one district to another. At any rate, if it were to be the intention of appellants 2 and 3 that the respondents must work at the place of initial appointment, with effect from the date of signing of the contract of renewal, a clear clause to that effect ought to have been incorporated. Not a word is said about the place of working in the order dated 27.3.2011.

9. In case appellants 2 and 3 wanted any change as to the place of working of the respondents, they could have certainly passed orders in this behalf. It appears that whole exercise was sought to be undertaken through oral directions.

10. The second aspect is about nonpayment of remuneration. As long as the respondents reported at the place of their duty, the appellants are under the obligation to pay the remuneration. There was absolutely no justification for denying payment of remuneration to such of the respondents who are stated to

have reported for their duty.

11. So far as the grievance of the respondents that the steps are being taken by the appellants for filling up the posts by fresh candidates, the learned Single Judge took note of certain developments.

12. If the appellants intend to appoint the technicians in the same vacancies, against which, the respondents were appointed, it is totally impermissible for them. Once the appellants have been appointed and they were imparted training, they cannot be displaced by similar set of contractual appointees. It is a different matter that if the appellants want to make permanent appointment against the posts, they shall have to issue notification in that behalf and the respondents shall also be entitled to apply for them.

13. Therefore, the Letters Patent Appeal is dismissed, with the above clarification.

14. Since the order of the learned Single Judge passed in the writ petition merges into this proceeding, we grant three weeks time to the appellants to comply with the directions issued therein, as regards payment of salary and other aspects.

15. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.