

(2023) 10 PAT CK 0039

In the Patna High Court

Case No : Letters Patent Appeal No. 1293 Of 2019 In Civil Writ Jurisdiction Case
No. 6834 Of 2017

State Of Bihar

APPELLANT

Vs

Chanarik Baitha,

RESPONDENT

Date of Decision : 17-10-2023

Acts Referred:

Bihar Reorganization Act, 2000 — Section 74

Citation : (2023) 10 PAT CK 0039

Hon'ble Judges : K. Vinod Chandran, CJ;Rajiv Roy, J

Bench : Division Bench

Advocate : Sunil Kumar Mandal, Bipin Kumar, Neelam Kumari, Kishore Kumar
Thakur, Braj Kishore Singh

Final Decision : Dismissed

Judgement

1. The obstinate recalcitrance of the State Government, very evident from the above appeal filed, is to deny the first respondent pension to live a peaceful retired life, as a government employee, despite having succeeded in the various litigations before this Court. The learned Single Judge directed that the writ petitioner, the first respondent herein, should be treated to have been absorbed on and from the date of deputation and should be granted the pensionary benefits in terms of the pension rules which were operational at the relevant time. The main plank of the State in challenging the impugned judgment is the decision of the Hon'ble Supreme Court in an appeal from the order in L.P.A. No. 608 of 2006 and connected matters preferred by the State of Jharkhand, which judgment (in L.P.A) was consistently relied on by various Benches of this Court to allow the claim of the respondent and other similarly situated deputationists.

2. We need to look at the various judgments as available from the records before we look at the facts of the case. The admitted facts are that many of the public sector undertakings (PSUs) floated by the State failed to achieve the desired objects and purposes and in course of time became dysfunctional, having

suffered huge losses, making their continuation a burden on the exchequer. Faced with the prospect of closing down, the State at first resorted to pruning of manpower and permitted deputations to be carried out so that the personnel of these PSUs/Corporations were accommodated in government departments. A selection procedure was resorted to and many of the excess personnel were accommodated in the various departments, wherein, based on their satisfactory performance the deputations were extended. Some of them were regularly absorbed in the Government but others were denied such absorption.

3. Such regularization on mere whim and caprice also led to repatriations to the parent department wherein the deputationists would be denied of pension; especially when cancellation of deputation resulting in the repatriations was made just prior to retirement and to dysfunctional entities. Solitary cases taken up by those employees whose deputations were cancelled were allowed by this Court. But a batch of such cases were dismissed by the learned Single Judge which led to appeals being filed, eight of which were disposed of by judgment dated 19.04.2010 in LPA No. 608 of 2006 and connected matters (Avinash Vatsyayan v. The State of Bihar & Ors.).

4. In L.P.A 608 of 2006 and connected cases, the appellants who were also the writ-petitioners and employees of a Cooperative Society (the BISCOMAUN) in which at the relevant time, there was an Administrator appointed. The appellants were sent on deputation to Government departments because of the poor financial condition of the Society, its very viability having been threatened by its dismal performance. The learned Single Judge found that the deputation of petitioners to the Government departments, which saved their employment, could only be treated as any other deputation, liable for repatriation to the parent Organization at any time. The State Government's stand that there was never a decision taken to absorb those who were on deputation, which itself was a temporary measure, was accepted by the Writ Court.

5. The Division Bench of this Court found that though there was no formal notification of the government policy to transfer the services of the petitioners to the government departments, the mere term employed, of deputation cannot deprive them of the benefit of the policy which has been extended to many similarly situated persons.

6. There were also judgments of this Court, though in solitary instances, wherein similar deputation of employees under the government policy decision, culminated in their absorption enabling every benefit due to a government employee on superannuation; reckoning the period spent on such deputation as government service.

7. It was held that the transfer of employees to the government departments was not a simple deputation as is ordinarily understood in service jurisprudence and it was rather a good and acceptable mechanism to transfer services of suitable employees to organizations and departments where the vacant posts

were available and their services could be utilized; eventually leading to absorption in the light of the policy of the Government.

8. Reliance placed on the Division Bench judgment in *State of Bihar v. Gopal Prasad*; 2003 (4) PLJR 495 was found to be not relevant since in the said case, the deputation orders were issued after 16.11.1999, which was accepted as a cut-off date as per the policy decision, on that very date, of the Government, from which date general deputation of employees other than government servants could not be made to government departments.

9. *Md. Amanullah v. State of Bihar*; 2004 (1) PLJR 145 was another Division Bench judgment cited, to find the concept of cut-off date introduced later, having not adversely affected the regularization of deputations made before the cut-off date. The Division Bench also referred to various judgments of learned Single Judges wherein regularization was directed or declined, based on the distinguishing facts coming out therein.

10. Further, in *Md. Shamim Ansari v. The State of Bihar*; 2002 (2) PLJR 579, the learned Single Judge found the normal rule of deputation to have no application, where it is made more in the nature of a rehabilitation. The parent department had virtually ceased to exist, for all intent and purposes and it would be futile and unrealistic to send back the deputationist to the parent department was the finding.

11. Again, in *Raghunath Sharma v. State of Bihar*; 2003 (2) PLJR 396 deputation of the employee was made after 16.11.1999. The Division Bench in L.P.A. No. 608 of 2006 held, as a logical corollary to the discussions made, that the petitioner's appeals, except one, where the deputation was made after 2001, should be allowed. An SLP filed from the aforesaid judgment by the State of Bihar was dismissed.

12. When matters stood thus, there was an attempt to cancel the deputation of similarly situated persons, including the first respondent which was challenged by the Bihar State Government Employee's Association and eleven individuals on deputation, by filing CWJC No. 10016 of 2007 in which judgment was delivered on 06.04.2011. The learned Single Judge who disposed of the writ petition held so in the last paragraph, which is extracted hereunder:-

"I find that all petitioners who are members of Petitioner No. 1 "Association" as well as other petitioners, stands on similar footing as appellants of the LPA No. 608 of 2006 and its analogous appeals, as such entitled for similar relief. Accordingly, the Respondent Nos. 2, 3, 4 and 5 are directed to pass necessary order of absorption of all these petitioners. None of the petitioners shall be repatriated to those defunct Boards, Corporations, Public Sector Undertakings / Enterprises, which were their parent Department. Petitioners will be allowed to superannuate from the posts, they are working. They will be paid their salary, pensionary benefits, remaining on the same post.

With these direction / observations, this Writ Application is disposed of.”

13. However, the Government continued its recalcitrance which led to number of contempt cases and writ petitions being filed. A batch of contempt cases were disposed of by Annexure- P-10, which cases were filed for non-compliance of the judgment in LPA No. 608 of 2006. The Division Bench judgment and the terms therein were emphasized to find the beneficiaries entitled to be treated as government employees from the date of deputation for the purpose of pensionary benefits.

14. The first respondent, issued with an order of cancellation of deputation, challenged it by filing CWJC No. 531 of 2011. It came to be disposed of on 14.07.2011 by Annexure- P-13. The Hon’ble Single Judge quashed the letter bearing Memo No. 861 dated 16.03.2010 passed by the Director, Integrated Child Development Scheme (“ICDS” for brevity), Bihar; by which his deputation was cancelled, as also the consequential order/ letter no. 1124 dated 30.06.2010 and the matter was remanded back to the Director, ICDS for fresh consideration.

15. A contempt case was initiated as MJC No. 3694 of 2011 in which there was an order passed on 25.01.2012 (Annexure- P-14) directing a fresh show-cause to be filed on the submission of the Government Pleader that the Director, ICDS has been requested to reconsider the matter. An appeal filed from the judgment in CWJC No. 531 of 2011 by the State of Bihar was dismissed (Annexure-P-15) in LPA No. 634 of 2012 connected with LPA No. 172 of 2010.

16. MJC No. 3694 of 2011 was disposed of on 12.08.2015 (Annexure-P-18) wherein it was noticed that the Director, ICDS had permitted the first respondent to continue in service till attainment of 60 years of age. In so far as the first respondent’s apprehension regarding payment of gratuity, it was directed to be agitated before the appropriate authorities. Despite all these litigations, the State refused to grant pensionary benefits to the first respondent on the ground that he was never regularized in service, which led to the writ petition from which the instant appeal arises.

17. The bulwark of the contention of the State is the judgment of the Hon’ble Supreme Court produced as Annexure-10 in this L.P.A, which challenged the Division Bench judgment of this Court in LPA No. 608 of 2006 and analogous cases. The Civil Appeal before the Hon’ble Supreme Court arose from the judgment of the High Court of Jharkhand in LPA No. 243 of 2008. Therein also, a similar claim of regularization was raised in which the regularization had to be made by the State of Jharkhand after the Bihar Reorganization Act, 2000 which required the employees of the erstwhile Government of Bihar to be dealt with according to Section 74 of that Act. The learned Judges found that a deputation arrangement would not be covered under Section 74 of the Bihar Reorganization Act, which deals only with substantive employment in the State. The grounds of legitimate expectation and promissory estoppel were negatived and the reliance placed on the judgment of this Court in L.P.A. No. 608 of 2006, which was upheld

in the SLP by the Hon'ble Supreme Court, was found to be of no consequence in so far as the State of Jharkhand was concerned.

18. Before the Hon'ble Supreme Court, the appellant in LPA No. 243 of 2008 challenged the judgment of the High Court of Jharkhand and the State of Jharkhand, after obtaining leave, challenged the judgment in LPA No. 608 of 2006, of this Court. The Hon'ble Supreme Court in Annexure-10 common judgment found that the decision taken for deputation from 'BISCOMAUN' was of a committee comprising three officers of the State of Bihar which cannot be deemed to be a High-Powered Committee decision of the State of Bihar. A note submitted before the 'Committee on Economic Policy and Coordination of the Council of Ministers' was found to have contained the stipulation of clear guidelines being required for the scheme of rehabilitation of the surplus employees of BISCOMAUN; which had to be presented before the Council of Ministers. Neither was an approval granted by the Coordination Committee of Economic Policy of the Cabinet nor was there a Cabinet decision.

19. The judgment of the High Court of Jharkhand in LPA No. 243 of 2008 was upheld and the judgment of the Patna High Court in LPA No. 608 of 2006 was set aside in so far as it relates to the two appellants. This does not in any manner affect the case of the first respondent herein, especially since even now LPA No. 608 of 2006 and the subsequent judgment passed in CWJC No. 10016 of 2007 and the later judgment passed in CWJC No. 531 of 2011, the last filed by the first respondent himself, as upheld in LPA No. 634 of 2012 remain in force. These decisions regulate the relationship of the parties in the present appeal also.

20. The judgment in the Civil Appeal filed by the State of Jharkhand specifically interfered with the decision in LPA No. 608 of 2006 only in so far as it relates to the appellants therein, who claimed regularization under the State of Jharkhand. We have to pertinently observe that this was also in the circumstance of the decision taken for deputation of those employees from BISCOMAUN, a Cooperative Society. When, those employees who remained in the State of Bihar were regularized by virtue of the common judgment in LPA No. 608 of 2006, there is no reason why the first respondent herein who was deputed from the Bihar Construction Corporation to the Integrated Child Development Services should be denied of such regularization.

21. On the facts of the first respondent herein, he was appointed and continuing as an Accounts Assistant in the Bihar State Construction Corporation Limited (henceforth for short "the Corporation"). There was a decision taken to wind up non-viable Corporations, but taking into account the pitiable financial position of the employees serving there, the Government as a measure of rehabilitation directed different departments to consider such surplus employees for deputation after examining their individual qualification and eligibility. The Treasury and Accounts Directorate of the Finance Department called for such names of surplus employees and laid down the service conditions of rehabilitation as per Annexure- P-1. Clause-6 of Annexure P-1 stipulated that the assessment of

performance of the deputationists would be made every year and if their services are found satisfactory, their deputation as also eventual absorption would be considered.

22. The Commissioner and Secretary of the Welfare Department by communication dated 07.02.1996 called for the list of surplus employees of Corporations for the purpose of employing them on deputation in 'the ICDS' Projects as well in the ICDS Directorate. The first respondent was declared successful in the selection test and was placed on deputation by an order dated 21.03.1997, produced as Annexure P-2.

23. The first respondent was thereafter appointed in the Class-III post of Clerk and continued till he was threatened to be repatriated upon. He successfully challenged the order in CWJC No. 531 of 2011, based on the judgment in CWJC No. 10016 of 2007, where his cause was also agitated by the Government Employees' Association, which decision relied on the principle in LPA No. 608 of 2006. The first respondent in the memorandum itself has pointed out a number of cases where identical deputationists were regularized in service. Even with respect to the first respondent herein, the decisions in the writ petitions filed by him cancelled his repatriation and allowed him to continue till he was retired.

24. In fact, by Annexure-P-5 dated 25.09.2002, the Finance Department of the State of Bihar circulated the policy decision of the Government to allow those surplus employees, accommodated on deputation till the cut-off date of 16.11.1999, to be continued on deputation and those who were deputed after the said date to be repatriated to the parent organization. The first respondent attained the age of superannuation and despite by Annexure- P-17 the Child Development Project Officer ordered payment of gratuity, the Treasury refused to make such payment on account of the fact that there was no permanent absorption carried out. The first respondent on bringing it to the notice of the Writ Court in MJC No. 3694 of 2011, as noticed earlier by Annexure P-18, was directed to make a representation which was made as per Annexure P-19 which evoked no response leading to the instant writ petition.

25. As we observed at the outset, the State has been obstinate in its recalcitrance to deny the first respondent the fruits of the litigation, thus acting in flagrant violation of the various orders issued by this Court. The first respondent who was working in a Public Sector Undertaking was sent on deputation to a government department and work was extracted from him for a long period, as is done from any other government employee.

26. Further, as has been held by the various decisions, the instant deputation was not a simple deputation as normally understood in service jurisprudence rather it had an element of rehabilitation. We cannot but observe that the State also benefited from the same since otherwise by reason of the excess employees in the PSUs they would have collapsed immediately and such PSUs would have had the responsibility to retrench its employees with suitable compensation. The

deputation granted by the State, to its own departments was on a definite policy framed by the Government; which while providing succor to the employees of PSUs also ensured that the already unviable PSUs were not saddled with further financial burden.

27. The employees from the PSUs were accepted by the Government, which more than demonstrates the policy decision; which we find is not only in the nature of rehabilitation but also to ensure the survival of the PSUs, which would have folded up for reason of continuance of such excess employees or further liability being incurred for retrenchment of the excess employees.

28. The Government having extracted the work from the deputationists for long and a policy having been taken not to repatriate those who were deputed before a cut-off date; i.e. 16.11.1999, there is no reason to deviate in solitary instances from the policy decision taken. The judgments inter parties regulate the issue dealt with.

29. In the aforesaid background, the observation of the Hon'ble Single Judge in the impugned judgment; that refusing to grant benefit of pension on account of the fact that the petitioner has already superannuated is completely wrong and arbitrary exercise of power is fully justified. The Writ Court rightly directed the authority to treat the respondent petitioner to have been absorbed on and from the date of deputation and be granted pensionary benefit in terms of pension rule operational at that time.

30. We direct the first respondent herein to be treated as having been regularized from the date of his deputation and his further service in the Government shall be reckoned for the purpose of pension. The entire pensionary benefits due to the first respondent shall be paid to him within a period of three months from today and the further pension due to him shall be commenced from the fourth month from today.

31. The Letters Patent Appeal is dismissed with exemplary cost of Rs. 10,000/- (ten thousand) payable to the first respondent together with the other retirement dues applicable to him; for the attitude of the Government, which does not ordinarily behave a welfare State; especially in the teeth of the inter-parties judgment. It is also made clear that if the pension dues are not paid within the time stipulated, it shall carry 9% interest from the beginning of the fourth month from today, till it is paid. If any gratuity remains to be paid, it goes without saying that it shall carry interest @ 9% from the expiry of one month from the date of his retirement till the date of payment; if not already paid.

32. The Letters Patent Appeal is dismissed with exemplary costs as indicated hereinabove.

33. Interlocutory Application(s), if any, shall stand losed.