
(2011) 05 PAT CK 0109
In the Patna High Court
Case No : LPA No. 759 of 2011

The Bhim Rao Ambedkar Bihar University and Others APPELLANT
Vs
Dr. Hari Narayan Thakur and Others RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Citation : (2012) 3 PLJR 10

Hon'ble Judges : Shiva Kirti Singh, J; Ravi Ranjan, J

Bench : Division Bench

Advocate : Y.V. Giri and Pranav Kumar, for the Appellant; Abhinav Srivastava, Abhay Shankar Singh and Mr. Rajendra Kr. Giri For the Chancellor, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant, learned counsel for the writ petitioner, Respondent No. 1 and learned counsel for the Respondent No. 3 as well as learned counsel for the Chancellor. We have gone through the order under appeal dated 22.4.2011 whereby CWJC No. 4626 of 2011 preferred by Dr. Hari Narayan Thakur, Respondent No. 1 has been allowed and order of transfer with respect to him dated 1.3.2011 has been quashed mainly on the ground that the decision appeared to be rushed decision and as to why such a decision was taken was not known and no material had been brought to help the Court in coming to the conclusion that the order of transfer is for administrative reason.

2. Learned counsel for the appellants has taken us through the communication made by the Vice-Chancellor on 28.2.2011 to show that the University and the Vice-Chancellor had come to a conclusion that a Principal of another College as well as the writ petitioner Dr. Hari Narayan Thakur had lost their academic and administrative control over the Colleges concerned and their appropriate replacement had become the need of the hour. The impugned order of transfer shows that after obtaining approval of the Chancellor the Vice-Chancellor had ordered for transfer of the writ petitioner and three other Principals and had

posted them in Colleges mentioned against their names. The writ petitioner was shifted from R.S.S. Mahila College, Sitamarhi to S.R.A.P. College, Barachakia and Principal of that College Dr. Mamta Singh, a lady was transferred to the R.S.S. Mahila College, Sitamarhi. The approval of the Chancellor to such transfer appears to have been taken by way of abundant precaution and that approval is available at Annexure-4 to the LPA by way of letter dated 28.2.2011.

3. The writ petition preferred by Dr. Mamta Singh against her transfer from Barachakia to Sitamarhi was disposed of finally by a learned Single Judge of this Court on 31.3.2011 with a direction to her that she should obey the order of transfer dated 1.3.2011 and the University should withdraw an order of suspension against her. The University has already withdrawn the order of suspension as submitted by learned Senior Counsel for the appellants but counsel appearing for Respondent No. 2 submits that she could not join that post because the writ petition preferred by Dr. Hari Narayan Thakur which had been allowed by the order under appeal on 22.4.2011 was pending.

4. From Annexure-C to the supplementary counter affidavit filed on behalf of the Respondent Nos. 2, 3 and 4 in the writ proceeding, it is evident that the order dated 31.3.2011 disposing of the writ petition preferred by Dr. Mamta Singh was brought on record of the writ proceeding out of which this appeal arises but for some reason the same has escaped the attention of the learned Single Judge.

5. Learned Senior counsel appearing for the appellants has submitted that an order of transfer is prerogative of the authorities concerned and Court should not normally interfere therewith except when it is shown to be mala fide or in violation of any statutory provision or passed by an authority not competent to pass such an order. It is well established in service jurisprudence that transfer is a normal incident of service and cannot be treated like an order of punishment. In support of the aforesaid submission learned Senior Counsel for the appellant has placed reliance upon several Apex Court's judgments but suffice to refer to two of them, State of U.P. and Others Vs. Gobardhan Lal, and Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others, .

6. In the facts of the case, where there was no mala fide alleged and the order of transfer has been passed by the authority having jurisdiction to do so without violating any statutory provision, we do not find any good reason to interfere with the impugned order of transfer and grounds for interference by the Writ Court do not appear to be in accordance with law laid down by the Apex Court. In that view of the matter the order under appeal is set aside and the writ petition is dismissed. The appeal stands allowed. There shall be no order as to costs.