
(1993) 06 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 3465 of 1992

The Bihar State Non-Gazetted Employees Federation	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Citation : (1993) 06 PAT CK 0002

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The petitioner which is a Federation of the Bihar Non-Gazetted Employees had filed this application Inter alia for issuance of a writ of or in the nature of mandamus commanding upon the respondents to maintain gradation list of the Secretary, Private Secretaries, Senior Personal Assistants and Personal Assistants in the matter of their transfer and posting by the respondents and for a further direction to abide by the Circular letter contained in letter No. 9/ PR-108/91 dated 17th July, 1991 which is contained in Annexure-1 to the writ application and the Circular letter dated 9-4-1967 as contained in Annexure-2 thereto.

2. The petitioner has contended that the Bihar Cabinet Secretariat and Co-ordination Department has issued a policy decision whereby and whereunder it was directed to all heads of the Department that the Establishment Committee should be constituted for making recommendations of transfer and posting of the employees of the concerned Department in terms of the-guidelines contain in the aforementioned letter dated 17th July, 1991.

3. According to the petitioner several glaring instances had come to its notice wherefrom it appears that the instructions contained in the aforementioned letter have been violated.

4. The petitioner in paragraph 11 of the writ petition as also in paragraph 7 of the reply/rejoinder to the counter-affidavit has given some such instances.

5. The State, on the other band, in its counter-affidavit Inter alia has stated as

follows:

That the statement made in paragraph 7 of the writ application is not acceptable. The fact is that the transfer and posting of the Personnel of the Personal Assistant (P.A) Cadre under the administrative control of the Department of Personnel and Administrative Reforms is not similar to other cadres. These Personnel are at times returned back by the officers under Whom they work to the department of personnel and Administrative Reforms and some times the P. A.'s report themselves in the leave reserve pool. Thereafter, according to demand already received in the "Department from Officers of different departments, these Secretaries Private Secretaries Senior personnel Assistant/P. A's are deputed to work with them.

It is also note-worthy that Ministers/Chairman of Public Sector Undertakings holding the rank of Ministers send requisition for deputation of a particular person, which are generally to be complied with, and also in the interest of work and in such postings seniority cannot be taken as the basis of deputation.

As stated earlier, service of Personal Assistants are at times returned on the ground of inefficiency, disobedience. But due to dearth of suitable hands, not available in the leave reserve pool at a given point of time, persons have to be deputed urgently to fill the vacancy in the interest of Government work. In such circumstances consideration of appropriate seniority cannot be adhered to.

6. The learned Counsel appearing on behalf of the petitioner has submitted that the State is bound by its policy decision and any violation thereof would amount to arbitrary exercise of power.

7. The Question, which, thus arises for consideration in this application is as to whether the petitioners are entitled to obtain a writ of or in the nature of mandamus as prayed for.

8. From a bare perusal of the Circular letter dated 17th July, 1991 as contained in Annexure-1 to the writ application it would appear that a directive had been issued therein that postings of the Personal Assistants, Senior Personal Assistants, Secretaries and Private Secretaries are to be made, keeping in view seniority and the guidelines contained therein, as far as possible.

9. It is true that when a policy decision is adopted by the State, it is bound by the mandatory provisions contained therein.

10. However, in a case where guidelines only have been issued by the State, the same are normally directory in nature. In view of the fact the Circular letter as contained in Annexure-1 to the writ application stipulates of the guidelines laid down therein should be followed, as far as possible, is a clearly suggestive of the fact that the same are directory in nature.

11. This aspect of the matter has been considered by a Division Bench of this Court in Man Singh v. State of Bihar 1982 BBGJ 392, wherein it has been held

that executive instructions issued laying down the procedures for transfer of the Government servants in absence of any rule framed under Article 309 of the Constitution of India, are directory in nature.

12. In view of the fact that the policy decision is directory in nature, is our opinion, the petitioner Federation is not entitled to issuance of a writ of or is the nature of mandamus from this Court commanding upon the State to strictly enforce the same.

13. Further it is now well-known that a transfer is an incidence of service.

In *Shanti Kumari v. Regional Dy. Director Health Services Patna* reported in 1981 SC 1577, it has been held that even if there has been a violation of any guidelines contained in any executive instruction, the remedy of the person aggrieved would be to file a representation before the authorities, but the High Court, in absence of any allegation of mala fide or violation of the statutory provision, should not interfere with an order of transfer

14. This aspect of the matter has been considered by the Supreme Court in *B. Varadha Rao Vs. State of Karnataka and Others*, , *Gujarat Electricity, Union Board v. Atmaram* reported in AIR 1969 SC 1433 *Rajendra Roy Vs. Union of India (UOI) and Another*, , and *M. Sankaranarayanan, IAS Vs. State of Karnataka and others*, .

15. Recently in *Union of India and Ors. v. S. L. Abbas* 1993 (2) SP718 the Supreme Court held as follow:

All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

Who should be transferred where, is matter for the appropriate authority to decide. Unless the order of transfer is vitiated of by mala fides or is made in violation of any statutory provision, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee as a legally enforceable right.

The Jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323A of the Constitution. The constraints and norms which the High Court observes while exercising said jurisdiction apply equally to the Tribunal created under Article 323A.. (We find it all the more

surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ Jurisdiction). The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute Its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if its were sitting in appeal over the order of transfer made by the Senior Administrative Officer (Competent authority).

(Emphasis supplied)

16. This aspect of the matter has also been considered by the Division Bench of this Court in Radhika Mohan Sharon v. State of Bihar reported in 1991 (1) PLR 500 and Mrs. Shilpi Bose v. State of Bihar reported in 1991 (1) PLR 61.

17. However, before parting with this case, we may observe that it is well-known that even directory provisions are required to be substantially complied with.

18. Mr. J. N. Jha, the learned Government Pleader No. 1 has assured us that infact the State intends to carry out the guidelines in their letter and spirit, but in view of the fact the particular Ministers and other officers requisition the services of particulars Stenographers and for similar reasons it may not always be possible to follow the said guidelines.

19. We hope and trust that the State in future shall act fairly and without any fear or favour in any manner whatsoever in following the guideline as contained in Annexure-1 and 2 to the writ application subject of course, to the administrative exigencies and other unforeseen situation.

20. This application is, therefore, dismissed, but in the facts and circumstances of the case, there will be no order as to costs.

R.N. Prasad, J.

21. I agree.