

(2001) 02 PAT CK 0109
In the Patna High Court
Case No : L.P.A. No. 1196 of 2000

The State of Bihar and Others

APPELLANT

Vs

Raghubansh Prasad Rai

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 9

Citation : (2001) 2 PLJR 526

Hon'ble Judges : Shiva Kirti Singh, J;N. Pandey, J

Bench : Division Bench

Advocate : Ashok Kumar Singh, for the Appellant; Banwari Sharma and Shiv Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. In this Letters Patent Appeal filed on behalf of the State of Bihar and its concerned officials the only question involved is whether by notification dated 2nd April, 1979 (Annexure-2) the writ petitioner respondent was granted substantive appointment to the post of Food Inspector and, therefore, entitled to salary and other emoluments from the date of notification till his superannuation and thereafter, to retiral benefits on that basis or whether by Annexure-2 the Governor of Bihar merely vested the power of Food Inspector in the sole respondent for the limited purpose of performing the duties of Food Inspector within the local limits notified by the notification in addition to his duties of Sanitary Inspector? It appears that sometime before his retirement on 31.1.1997, the writ petitioner-respondent filed a writ application bearing CWJC No. 6221 of 1996 for payment of salary for holding the post of Food Inspector as he performed the duty of such post from 2.4.1979 to 31.1.1997. In that case an unnecessary issue was raised at the instance of State of Bihar and its officials regarding genuineness of notification dated 2.4.1979 and in that background the writ application was disposed of on 27.6.1997 in following terms:

Having heard the counsel for the parties, in view of the disputed question of fact

as to whether the notification dated 2.4.79 is genuine or not, this court is not in a position to give any positive direction to the respondents. However, the respondent Commis-sioner-cum-Secretary, Health Department is directed to look its own file to find out as to whether the notification no. 1275(14) dated 2.4.79 is genuine or not. If it is found that such notification is on the record (file) and/or it was published in the gazette, in that case, the respondents will decide as to whether the petitioner was made incharge of the post of Food Inspector and/or was made a regular Food Inspector. If it is found that the notification is forged, then the petitioner is to be communicated with such order and in that case, the petitioner will not receive any amount. On the other hand, if the notification dated 2.4.79 is said to be correct, then in that case, the respondents will pay the admitted arrears of salary, if any, in favour of the petitioner. It is needless to say that if the petitioner is found to have been posted as incharge Food Inspector, then in that case, his case is to be considered in terms with rule 103 of the Bihar Service Code. A decision is to be taken in one or other way within a period of three months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of, with the aforementioned observations/directions."

2. The authorities thereafter rejected the claim of the petitioner through letter dated 18.2.1998 which was challenged in CWJC No. 3563 of 1998 which has been allowed by order under appeal.

3. Now, the genuineness of the notification dated 2.4.1979 is not in dispute and the only question, as mentioned earlier, is whether the said notification provided for appointment of petitioner as a regular Food Inspector. Admittedly, a post carrying higher pay-scale or whether it vested him with additional powers of Food Inspector as a temporary measures.

4. For the aforesaid purpose the English version of notification dated 2.4.1979 may be usefully extracted here The 2nd April 1979 S.O. 672 In exercise of the powers conferred by sub-section (1) of Section 9 of Prevention of Food Adulteration Act, 1954 (37 of 1954) the Governor of Bihar is to appoint the person named in column 2 of the Table hereto annexed as Food Inspector for the purpose of the said Act and direct that the said Food Inspector shall exercise powers within the local limits of the area mentioned in column 3 of the Table. This shall deem to be effective from the date of issue till further orders.

Table

Serial No.

Name and designation

Area within which powers shall be exercise

1.

Shri Raghubansh Prasad Rai, Sanitary Inspector Sitamarhi

Sitamarhi Municipal Area

By order of the Governor of Bihar

Sd/- S. Prasad

Deputy Secretary

5. The wordings used in the notification clearly show that the petitioner was not relieved of the post and duties of Sanitary Inspector, Sitamarhi and his appointment as Food Inspector under subsection (1) of Section 9 of Prevention of Food Adulteration Act was only for the purpose of the said Act and that also till further orders. Admittedly, petitioner was appointed as Sanitary Inspector and in the facts of the case there appears to be sufficient force in the submission on behalf of the appellants that the petitioner was simply given additional charge of the post of Food Inspector which he held as a temporary measure till his retirement while he continued to hold substantively the post of Sanitary Inspector as well. in such a situation, as per earlier order dated 27.6.1997 passed in CWJC No. 6221 of 1996 his case requires to be reconsidered in terms of Rules 103 of Bihar Service Code for determining the additional pay to which the writ petitioner respondent may be entitled in law for holding the current charge or officiating in the post of Food Inspector.

6. For this limited purpose the matter is remitted back to the Commissioner Cum-Secretary, Department of Health, Government of Bihar. It is made clear that since the petitioner was made to perform the duties of Food Inspector under the orders of Governor of Bihar duly notified in the official gazette, hence, it will not be open for the respondents to deny to the petitioner the benefit of Rule 103 of Bihar Service Code on one of grounds mentioned in earlier order dated 18.2.1998 that there is no sanctioned post of Food Inspector at Sitamarhi. A fresh order in accordance with law and keeping in view the observations made above, should be passed at an early date, preferably within a period of three months from the date of production/communication of a copy of this order before the concerned respondents. The monetary benefit found payable to the petitioner, if any, should be paid to him, within a further period of two months thereafter. As a result, the order under appeal stands mortified and this appeal is allowed to the extent indicated above. In the facts of the case, there shall be no order as to costs.