
(2001) 07 JH CK 0072
In the Jharkhand High Court
Case No : CWJC No. 2013 of 2001

Urmila Choudhary

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2001

Acts Referred:

Bihar/Jharkhand Treasury Code — Rule 148

Citation : (2001) 07 JH CK 0072

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Sameer Saurabh and R. Krishna, for the Appellant; B.S. Lal, A.A.G., P.K. Sinha M.K. Sinha and I. Sen Choudhary, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner against notification No. 181 (2) dated 5.5.2001 whereby and whereunder the respondent No. 4, Dr. Akhauri Sidheshwar Prasad has been given additional charge of the post of Civil Surgeon-cum-Chief Medical Officer, Koderma by way of temporary arrangement. He has been declared drawing and disbursing officer under Rule 148 of Bihar/Jharkhand Treasury Code Vol-I.

2. The petitioner has challenged the notification on two grounds, namely, she is senior to respondent No. 4 and the respondent No 4 having transferred to Bihar by Notification No. 1044 dated 23.12.1996, cannot be made Incharge Civil Surgeon-cum-Chief Medical Officer, Koderma.

3. Admittedly, the petitioner on posting is functioning as Deputy Superintendent Sub-divisional Sadar Hospital, Koderma since July, 1999. The post of C.S.-Cum-C.M.O., Koderma is a post of Senior Selection Grade (12-1/2%) and fell vacant in January 2001 on retirement of one Dr. Nagendra Prasad. After such retirement, the State Government: vide notification dated 2.3.2001 provided the petitioner with additional charge of the post of C.S.cum-C.M.O., Koderma and Additional Chief Medical Officer, Koderma for the period 2000-2001, she was also made

drawing and disbursing officer under Rule 148 of Treasury Code by impugned notification dated 5.5.2001. The respondent No. 4 now having been provided with additional charge of C.S.-cum-C.M.O., Koderma and having declared drawing and disbursing officer, the petitioner has raised grievance.

The respondent No. 4 on appearance has disputed the claim of petitioner that she is senior to the respondent No. 4 similar stand has been taken by the State. According to respondents, the respondent No. 4, Dr. Akhauri Sidheshwar Prasad was granted junior selection grade, w.e.f. 1.4.1986 vide notification dated 17.5.1997 and was also granted senior selection grade (12-1/2%) w.e.f. 1.4.1994 vide notification No. 393 (4) dated 11.7.1998. It has not been disputed that the petitioner has merely been granted junior selection grade w.e.f. 1.4.1987 by notification No. 214 (4) dated 19.3.1998.

4. From the fact aforesaid, it will be evident that the respondent No. 4 has made a prima facie case in his favour in the matter of seniority. However, such question need not be answered in the present case as it merely relates to interim arrangement made by the Government.

5. Now, the question arises as to whether the respondent No. 4 is at all posted in the district of Koderma or not.

6. This Court by its order dated 11.6.2001 asked the respondents to state as to whether any notification was issued after notification No. 1044 dated 23.12.1996 reposting the respondent No. 4 in the district of Supaul. The aforesaid question was raised as the petitioner alleged that the respondent No. 4 was transferred to Supaul vide notification No. 1044 dated 23.12.1996.

The respondents have not disputed that the respondent No. 4 was posted in the district of Koderma since 1993-1994 and was transferred to Supaul (now in Bihar) vide notification No. 1044 dated 23.12.1996. The said notification seems to have not been acted upon but the respondent No. 4 allowed to continue in the district of Koderma even thereafter for which the Court also asked for explanation from the State. The only stand taken by the respondents that the respondent No. 4 having not relieved, continued in the district of Koderma.

7. From the fact aforesaid, it will be evident that the respondent No. 4 is functioning in the district of Koderma for much more than six years. Though he was transferred vide notification dated 23.12.1996, it has not been acted upon for one or other reason, not disclosed in the Court. If the respondent No. 4 was not relieved, he should have requested the higher authority to relieve him to join the transferred post and the said authority should have also issued appropriate order relieving the respondent No. 4.

So far as petitioner is concerned, she having given additional charge of C.S.-cum.-C.M.O., Koderma for the financial year 2000-2001 i.e. upto 31.3.2001, has also no right to hold the charge of the said post.

8. Having regard to the facts and circumstances, while this Court is not inclined

to interfere with the interim arrangement as made vide Memo No. 181 (2) dated 5.5.2001, direct the State of Jharkhand through the Secretary, Health, Medical, Education and Family Welfare Department to post the respondent No. 4 in some other district than Koderma, where he is working for more than six to seven years in spite of notification of transfer dated 23.12.1996. Such notification of posting of the respondent No. 4 be issued by 31st July, 2001.

The respondent No. 4, in the meantime, may hold additional charge of C.S.-cum-C.M.O., Koderma but such interim arrangement of respondent No. 4 must come to an end by 31st July. 2001.

9. The writ petition stands disposed of, with the aforesaid observations/directions.

Let a copy of this order be handed over to Mr. H.S Lall, A.A.G. for information to the secretary, Health Department.

After the judgment was delivered, counsel for the respondent No. 4 pointed out that the petitioner is also posted in the district of Koderma for about ten years.

If, that be so, respondent No. 4 may bring the same to the notice of the Secretary-cum-Commissioner, Department of Health. Medical, Education and Family Welfare, Jharkhand, Ranchi.

10. W.P. disposed of accordingly.