
(1986) 03 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 537 of 1986

Visheshwar Nath Mehrotra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-1986

Acts Referred:

Constitution of India, 1950 — Article 233

Citation : (1986) PLJR 1023

Hon'ble Judges : M.P. Verma, J;H.L. Agrawal, J

Bench : Division Bench

Advocate : Tara Kant Jha, Mihir Kumar Jha and Chittaranjan Sinha No. 1, for the Appellant; Daman Kant Jha (G.A.) and Syed Rafat Alam (J.C. to A.G.) for Respondents Nos. 1, 3 and 4 and Mr. Ganga Prasad Roy, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Verma, J.—This writ application has been filed by the petitioner for reviewing the judgment and order dated 23.1.1986 passed by us in C.W.J.C.No. 151 of 1986 which was filed by respondent no. 6 to the present application. The petitioner, who was a member of the Bihar Superior Judicial Service and had been appointed to the post of the Secretary of the Bihar Vidhan Sabha, was impleaded as respondent no. 6 in that writ application. Undisputedly, the petitioner superannuated in regular course on the 30th of November, 1985 and thereafter by an order of the State Government dated 28.12.1985, which was made Annexure 1 to the earlier writ application, extension was granted to him to continue as the Secretary of the Bihar Vidhan Sabha.

The extension order was challenged in this Court on the ground that no extension could be granted to the petitioner after he had ceased to be a member of the Bihar Superior Judicial Service on his superannuation. On the earlier occasion the writ application was heard in extenso at the admission stage itself and the learned Advocate General had appeared for the State of Bihar and inasmuch as the order that was assailed was passed by the State Government, it

was not thought necessary to hear any other respondent, nor any indication was given to us by learned counsel for either party, that it would be desirable, muchless necessary, to notice any other respondent.

2. However, after a careful consideration of the points that were raised before us, we had allowed the application and the order of extension in favour of the petitioner was set aside.

3. The present application was filed on 30.1.1986 and the main point that has been pressed on behalf of the petitioner is that in any view of the matter the final order being against the petitioner, he was entitled to a notice and, therefore, the umbrella of the principle "of natural justice was pressed into service for consideration of the entire matter a fresh. In these circumstances, we thought it desirable to reconsider the matter. The Government Advocate who appeared for the State of Bihar this time, had submitted to our question that the speaker, respondent no. 2, who was also served with notice but did not choose to appear and had not given any separate instruction.

4. The relevant rule for appointment of a Secretary or Joint Secretary of the Vidhan Sabha is contained in rule 6 of the Bihar Vidhan Sabha Secretariat (Recruitment and conditions of Service) Rules, 1964, and reads as follows:

6. Appointing Authority:- (a) The appointment to the post of Secretary or Joint Secretary shall be made by the Governor in consultation with the Speaker from amongst persons serving in the Bihar Superior Judicial Service.

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On the earlier occasion we had quashed the order of extension of the tenure of the petitioner on the main ground that he had ceased to be a serving member of the Bihar Superior Judicial Service after his superannuation on 30.11.1985.

5. Since remaining as a member of the Bihar Superior Judicial Service was a sine qua mm for holding the post of the Secretary or Joint Secretary, Mr. Tara Kant Jha, appearing for the petitioner, submitted that there were precedents of the members of the Service being allowed to continue as the Secretary of the Bihar Vidhan Sabha even after the date of their superannuation and a few crises have been cited in paragraph 22 of the instant writ petition, nemely of (1) Shri Jitendra Narain Singh, (2) Shri R.P. Mandal, and (sic) Shri Madan Mohan Sahai, but in none of those cases any objection appears to have been raised from any quarter on any account. Those instances, therefore, cannot apply as binding precedents in the absence of any question having been raised muchless the same having been heard and decided.

Mr. T.K. Jha then placed reliance upon rule 73 of the Bihar Service Code which reads as follows:

73. The date of compulsory retirement of a Government servant is the date on which he attains the age of 58 years. He may be retained in service after the

date of compulsory retirement with the sanction of the State Government or public grounds, which must be recorded in writing.

He submitted that since the State Government had the power to retain in service any Government servant even after the date of his compulsory retirement on public grounds, the order of extension in favour of the petitioner must be upheld amounting to his automatic retention in the State Service under the powers conferred under the above rule.

6. The argument although appears to be attractive, it has got no merit for obvious and manifest reasons. The basic difficulty in accepting this argument is the limitation contained in Article 233 of the Constitution of India, according to which appointment of persons as well as the posting and promotions of District Judges in any State are to be made by the Governor of the State in consultation with the High Court concerned. After the superannuation the petitioner on attaining the age of 58 years, ceased to be a member of the Bihar superior Judicial Service, is a non-issue. His further retention in the Service, therefore, after the date of his compulsory retirement could be made only in consultation with the Patna High Court, and thereafter there should have been a separate order, in writing, of the State Government stating the reasons (public grounds) and it was only then that the petitioner's case could be considered under rule 6 of the aforesaid Rules. In the absence of these mandatory and Constitutional requirements, it is difficult to accept the contention.

7. Mr. Jha then argued at some length that much before the date of superannuation of the petitioner, the Government had requested the High Court (Vide Annexure 4, dated 10.10.1985) asking for names of three District and Sessions Judges to be sent to the Government in the Department of Personal and Administrative Reforms, as soon as possible for selecting the successor of the petitioner. He submitted that since the High Court had failed to forward the names to the State Government, the State Government in public interest was compelled to take recourse to extend the tenure of the petitioner as a "stop-(sic) arrangement" He further submitted that the High Court did not come in the picture in the matter of selection of the officers for appointment to the post of Secretary or Joint Secretary to the Vidhan Sabha as the Governor has to consult only the Speaker for the said purpose. This may be true, but that is not the question that has been raised in challenge of the impugned order being invalid due to the non-consultation with the High Court.

8. I find that two notifications have been issued in favour of the petitioner, one of which is dated the 30th of November, 1985 (Annexure-5) issued under the orders of the Speaker of the Vidhan Sabha himself. Obviously the Speaker is not the appointing authority of either the Secretary or the Joint Secretary of the Vidhan Sabha. He has only the authority to be consulted by the Governor in the matter of the appointment and the order has to be passed in the name of the Governor. The real notification is dated the 28th of December, 1985 (Annexure 6) which says that the petitioner would continue on his present post of Secretary in

anticipation of the concurrence of the Patna High Court till the appointment of his successor. At one stage Mr. Jha had submitted that copy of the earlier notification dated the 30th of November, 1985 (Annexure 5) had already been forwarded to the High Court as well and no objection having been taken by the High Court to that, it would amount in law that the High Court had no objection to make in the matter and, therefore, that would amount to an implied consent on the part of this Court in the matter of retention of the petitioner even after his superannuation as well as its argument to his continuing on the post of the Secretary.

9. This submission of Mr. Jha is equally fallacious as the notification (Annexure 5) followed by Annexure 6 cannot be saved as being substitutes for the active consultation with the High Court as required under Article 233 of the Constitution of India or an express order of the State Government in this behalf, as required under rule 73 of the Bihar Service Code. Reading the notification (Annexure 6), it is difficult to hold that it is an order under rule 73 of the Service Code. And unless that was done in a legal manner the question for passing any order under rule 6 of the Vidhan Sabha Rules did not arise.

10. Learned counsel for respondent no. 6 was right in his submission that the High Court had already forwarded the names of the three officers by its letter dated 18.12.1985 which was also received by the Government before the issuance of the impugned order dated 28.12.1985. The date of the impugned notification and the forwarding of the fresh names, as it was bound to be done in usual course of business, not only cuts at the root of the submission of Mr. Jha that by silence or delaying in forwarding the names the High Court would be deemed to be a consenting party to the retention in service and extension on the post of the Secretary, but on the other hand it also amounted to a disapproval of all those acts on the part of the respondent authorities inasmuch as the High Court wanted a fresh appointment. The post of Secretary of the Vidhan Sabha has remained vacant from time to time and the Court fails to appreciate the hurry muchless the suffering of any public interest for the vacancy of the post of the Secretary for a few months.

11. It was further submitted on behalf of the respondents that in view of the decision in *A. Janardhana v. Union of India and others* (A.I.R. 1983 S.C. 769) the petitioner was not a necessary party to the earlier writ application and, therefore, he was not entitled to maintain the present application in the nature of review on this count also. We, however, do not want to non-suit the petitioner on any technical ground and, therefore, we allowed him a full hearing with open mind and the matter is being disposed of on merits. For the reasons discussed above, I do not find that there is any merit in this application and our previous order requires any modification or change. The present writ application accordingly falls and is hereby dismissed. Although the petitioner, on the facts and in the circumstances, deserves to be saddled with costs, since he was a member of the Judicial Service and has since retired, I shall relieve him from the said liability.

Hari Lal Agrawal, J.

I agree.