

Vinod Kumar Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-14-2007

Judge : Navin Sinha, J.

Appeal No. : CWJC No. 12656 of 2006

Appellant : Vinod Kumar Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Rajesh Kumar, G.P. 20

Advocate for Pet/Ap. : Rajendra Pd. Singh and Niranjan Kumar, Advs.

Disposition : Application allowed

Prior history : Navin Sinha, J. 1. Heard learned Counsel for the petitioner and learned Counsel for the State. 2. The petitioner is a Statistical Supervisor. He was posted in the office of the District Education Officer at Biharsharif in the district of Nalanda. On 9.3.2006 at Annexure-1, a communication was issued by the Deputy Collector Incharge of the Public Grievances Cell addressed to the District Superintendent of Education, Nalanda, that complaints have been received against the petitioner. He should,

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioner and learned Counsel for the State.
2. The petitioner is a Statistical Supervisor. He was posted in the office of the District Education Officer at Biharsharif in the district of Nalanda. On 9.3.2006 at Annexure-1, a communication was issued by the Deputy Collector Incharge of the Public Grievances Cell addressed to the District Superintendent of Education, Nalanda, that complaints have been received against the petitioner. He should, therefore, be transferred out of the District Headquarters with a compliance report to be submitted. Annexure-2, dated 16.3.2006 then came to be issued by the District Superintendent of Education, Nalanda stating that on direction of the Deputy Collector Incharge dated 9.3.2006 the petitioner was deputed to the office of the Sub-divisional Education Officer, Hilsa. Thereafter, an order dated 14.7.2006 at Annexure-3 came to be issued from the office of the District Magistrate, Nalanda at Biharsharif by which the services of the petitioner were transferred to the office of the Regional Deputy Director, Patna Division, Patna.
3. Learned Counsel for the petitioner submits that the petitioner is an employee of the Education Department. His controlling authority is the District Education Officer. The impugned orders at Annexures - 1, 2 & 3 are illegal on the face of it as being without jurisdiction. It is apparent from the recitals in Annexure-2 that it has not been passed by his Controlling Officer of his own volition by independent application of mind to his satisfaction, but that it has been passed at the dictates of the Deputy Collector. The controlling authority has, therefore, abdicated his Statutory powers and acted on the direction of and behest of an external authority which vitiates the order. For like reason Annexure-3 is completely without jurisdiction inasmuch as the District Magistrate has no power to transfer the petitioner. In consequence of the aforesaid situation, the petitioner has not been paid his salary since July, 2006.
4. The submissions from the counter affidavit on behalf of the Respondents are that the petitioner has managed to remain posted in the district of Nalanda for approximately 24 years. Allegations were received against him and, therefore, the District administration was forced to return back his services to the Regional Deputy Director of Education, Patna. That the District Magistrate was the

administrative head of the district and, therefore, the order requires no interference.

5. On a bare perusal of the recitals in Annexure-2, it is apparent that there has been abdication of powers by the statutory authority and who has acted at the dictates of one who had no jurisdiction in the matter. The order reflects no satisfaction or application of mind by the statutory authority.

6. It stands well settled in-law that an order by the statutory authority without application of mind by him, but, at the dictates of another, amounts to complete abdication of jurisdiction by the statutory authority. The order, therefore, becomes arbitrary and ultra vires.

7. The apex Court elucidating the legal position has held at paragraph 26 in : (2004)2SCC65 (Bahadursinh Lakhubhai Gohil v. Jagdisxhbhai M. Kamalia and Ors.) that:

26. It is also well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires,

8. In the result, this Court finds it difficult to sustain the order of transfer of the petitioner from Biharsharif. The orders at Annexure-2 is quashed.

9. Insofar as Annexure-3 is concerned, it suffers from a greater vice. The order is completely without jurisdiction and is a complete nullity. The District Magistrate is neither the appointing authority nor the controlling officer of the petitioner. The order is an illegal usurpation of powers by the District Magistrate. Annexure-3 is accordingly quashed.

10. The petitioner has remained posted at Nalanda for approximately 24 years, this shall not preclude the statutory authority from considering the issue of transfer of the petitioner afresh and otherwise in accordance with law.

11. The impugned actions of the Respondents have been found to be illegal. The petitioner is entitled to his salary dues from July, 2006. Let the same be paid to

him within a period of four weeks from the date of receipt and/or presentation of a copy of this order.

The writ application stands allowed.

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