

Rajiv Ranjan Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-26-2002

Judge : Shashank Kumar Singh, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 10379 of 2002

Appellant : Rajiv Ranjan

Respondent : The State of Bihar and ors.

Advocate for Def. : V.N. Sinha, GP 9 and Makardhawaj Upadhyaya, Adv.

Advocate for Pet/Ap. : Ravi Ranjan, Sanjay Kumar Pandey, Adv.

Judgement :

S.K. Singh, J.

1. Heard Learned counsel for the petitioner and the counsel appearing for the respondents.

2. The present writ application was filed as it was contended on behalf of the petitioner that pursuant to the order dated 14-8-2002 he had already assumed the charge of Junior Engineer in the Hardinge Road Section of the Central Building Division and by order dated 6-9-2002 Respondent No. 6, who was holding the said

post was transferred on the next date i.e. on 7-9-2002 by Annexure-4. The transfer of the petitioner has been rescinded along with Respondent No. G. The aforesaid order has been challenged as the same suffers from the vice of mala-fide.

3. The contention on behalf of the petitioner is that the services of 31 Junior Engineers of the Road Construction Department was transferred to the Building Construction Department and two of them including the petitioner gave their joining in the Building Construction Department and as such they were required to be posted. Order of posting of the petitioner to the Hardinge Road Section of the Central Building Division was passed. However, for the reasons best known to the authorities just on the next date the aforesaid order has been reversed and mala-fide had been alleged. As such this Court by its order dated 7-10-2002 while issuing notice to Respondent No. 6, the subsequent order as contained in Annexure-4 was stayed. On 14-11-2002 when the matter had been taken up, heard the parties at length and specific allegations were made by both the sides that transfer of petitioner as well as Respondent No. 6 was being done as the same was being politically influenced by member of the Legislative Assembly, Rather it was contended by Respondent No. 6 that the petitioner got himself posted by a recommendation made by a M.L.A. and when the petitioner met the Engineer-in-chief and explained his case that he had not worked or the usual period of posting at a place and other circumstances as to why he was required to be kept in Patna, the aforesaid decision has been taken. On which it has been

contended by the learned counsel for the petitioner that actually the Respondent No. 6 has also used his influence by a M.L.A. and endorsement by the Minister of the Department. This Court having no option has to call for the records as to whether the transfer has been done through the establishment committee or not.

4. From the record, it transpires that as the services of the writ petitioner had been sent to Road Construction Department immediate posting was required and as the office has suggested that 31 persons had not joined, as such he had to be posted by the concerned Chief Engineer and though the present Engineer-in-Chief who is also holding the said post, therefore, posting him in the Hardinge Road Section. Subsequently the record goes to show that the establishment committee in view of

the fact that the Respondent No. 6 had been posted at Ara. Now the question which arises for consideration is as to whether the decision of the establishment committee for any reason whatsoever can be reversed by the Engineer-in-chief, the same has to be answered in negative. The Head of the Department may agree with the decision of the Establishment and implemented it or disagree with and referred it back to the Establishment Committee with his own suggestion which would be subject to the reconsideration by the Establishment Committee or otherwise kept his views affirmed by the Chief Minister of the State but neither of the two have been done as such the subsequent order of the Chief Engineer as contained in Annexure-4 cannot be sustained and the same is quashed.

5. Though this Court does not want to go in detail and what has been transpired from the records of the case it leads the Court no doubt that both, the petitioner and the Respondent No. 6 are utilizing their political clout to stay on one post or one place was affirmed on one reason or the other. Even for bringing the Respondent No. 6 again to his post, it is stated that an enquiry which is pending against him regarding the Bitumen scam. When asked by this Court, the counsel for the Respondent No. 6 has contended that though an enquiry was pending in which a show cause has been asked, but neither a criminal case nor a departmental proceedings is pending against him as such this Court sees no reason as to why a person has to be kept at a place even if some quarries are to be answered. This Court also feels to appreciate as to till how long the petitioner's posting is to be there without it be approved by the establishment Committee as such the only direction which this Court proposed to give is that the Secretary of the department to get the meeting of the establishment committee convened and consider the posting of petitioner and other persons and Respondent No. 6 at the earliest preferably within a period of two months from the date of receipt of the order and also take into consideration the influence which the petitioner and Respondent No. 6 has tried to exercise to obtain a particular posting.

6. With the aforesaid directions/observations this writ application is disposed of.