

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

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Court : Patna

Decided On : Feb-20-2003

Judge : Shashank Kumar Singh, J.

Acts : Service Law

Appeal No. : C.W.J.C. Nos. 7910 and 9447 of 2002

Appellant : Bipln Kumar Singh and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Rajendra Prasad Singh and Bindhyachal Singh in CWJC No. 9447/2002

Advocate for Pet/Ap. : Y.V. Giri, Bindhayachal Singh and Uday Pratap Singh in CWJC No. 7910/2002

Disposition : Application allowed

Judgement :

Shashank Kumar Singh, J.

1. Both the writ applications were heard together and as the same and similar points arise in them and the same reliefs have been prayed for, as such, with the consent of the Counsel for the parties both are being disposed of by a common

order.

2. C.W.J.C. No. 7910 of 2002 has been preferred for quashing the Letter No. 5376 dated 9-7-2002, issued by the Additional Commissioner, (Resources) Department of Finance, Bihar, as contained in Annexure-7 so far as it relates to the petitioners, by which he has directed the District Magistrate to cancel all deputations done after 16-11-1999. A further prayer has been made that District Magistrate, Mungei be restrained from issuing any cancellation letter of deputation/joining of the petitioners in compliance of the aforesaid-direction.

3. Contention on behalf of the petitioners is that petitioners were appointed as Class-III employee in different years in Bihar State Pharmaceutical and Chemical Development Corporation Ltd., Bihar State Food and Civil Supplies Corporations and Bihar State Textiles Corporation, which are established and controlled by the Bureau of Public Enterprises (Finance Department), Bihar. Petitioners were discharging their duties satisfactorily in the place of their appointment/deputation.

4. It has further been contended that pursuant to the policy decision of the State Government to depute/absorb Class-III employees of the Corporation/Enterprises established under Bureau of Public Enterprises against the vacant post of treasury, as such, Department of Finance issued letter being Letter No. 6749 dated 7-10-1999 under the signature of the Finance Commissioner, Bihar addressed to all the District Magistrate/Deputy Commissioners wherein terms and conditions, eligibility criteria, procedure regarding payment of salary and selection were laid down. The aforesaid letter further went to say that earlier in the treasury, employees from the directorate of treasury were being deputed at the level of Finance Department but since the directorate of treasury now stood dissolved, therefore, the concerned District Magistrate have been made, controlling officer of the concerned treasury and accordingly, the power of deputation after selection of the employee of the Corporation is vested in the respective District Magistrates. The notification clearly envisages for a deputation of employees of the corporation established under the Bureau of Public Enterprises in the treasury. The aforesaid letter which is appended as Annexure-1 is quite clear and specific.

5. Further contention on behalf of the petitioners is that the District Magistrate, Munger after receipt of Annexure-1 issued a letter dated 27-11-2000 to all concerned corporation established under the Bureau of Public Enterprises to send names of eligible employees having prescribed qualification as per the directive, in the aforesaid letter, as contained in Annexure-1. Accordingly, the concerned corporation sent the list of such eligible persons having prescribed qualification to the District Magistrate, Munger. Thereafter, a Selection Committee was constituted under the chairmanship of the District Magistrate, Munger having the Director, District Rural Development Authority, Treasury Officer and Deputy Collector Establishment, Munger as its member. The aforesaid committee in its deliberation dated 24-5-2001 determined the selection procedure for selection of suitable candidates and was decided in the aforesaid meeting that those applicants who fulfil the eligibility conditions as laid down in Letter No. 6749 dated 7-10-1999 of the Finance Department shall only be called for the interview. Thereafter, interview letters were issued to the eligible candidates to appear on the date fixed as per the said letter.

6. The petitioners also received interview letters dated 1-6-2001 whereby they have been directed to appear on 27-6-2001 at 9.00 a.m. in interview alongwith requisite Documents. One of such letters have been appended as Annexure-2 to the writ application. Interview was held on 27-6-2001 and subsequently, the committee prepared a panel of seven successful applicants on the basis of merit and performance. A copy of the said proceeding has been appended as Annexure-3. Vide Memo No. 1501 dated 7-7-2001 letter of appointment/deputation was issued to the writ petitioners. The aforesaid letter goes to show that 20 candidates were called for interview and out of which seven had been selected in view of letter of the Finance Department Bearing No. 6749 dated 7-10-1999. These facts have been brought on record in support of contention on behalf of the petitioners that their deputation was not a simple deputation but has been done for the purpose of absorption and as such, they were not covered under fresh circular issued by the Finance Department on 16-11-1999, under Sub-clause 5 which went to show that deputation from the Boards/ Corporations to the State Government was a debar from the aforesaid date and as such, it has been argued that taking the aforesaid letter into consideration the repatriation of the petitioners to their

parent department was not required and as they were discharging their duties to the satisfaction of the place where they have been deputed, as such, in view of earlier policy decision of the State Government their services was required to be absorbed.

7. Similarly C.W.J.C. No. 9447 of 2002 has been filed for quashing the Letter No. 6403 dated 9-8-2002 as contained in Annexure-5 so far it relates to the writ petitioners, by which a direction has been issued to cancel all the deputations made after 16-11-1999. Petitioners who were initially appointed as Class-III employees in different Corporations namely Bihar State Sugar Corporation, Bihar State Small Scale Industries Corporation, Bihar State Pharmaceutical and Chemical Development Corporation and Bihar State Construction Corporation established and controlled by the Bureau of Public Enterprises. Pursuant to the policy decision of the State Government to depute/absorb Class-III employees of the Boards/Corporations under Bureau of Public Enterprises against the vacant post in the treasury as these Boards/ Corporations had either become sick or the employees have become surplus, petitioners after facing strict scrutiny details of which has already been given while discussing the facts in C.W.J.C. No. 7910 of 2002 were appointed and deputed in different treasuries in the State of Bihar.

8. Petitioners of both the writ applications are aggrieved by the same/similar order issued by the Additional Commissioner, Department of Finance, by which the District Magistrate have been directed to cancel all such deputations made after 16-11 -1999. It has been argued on behalf of writ petitioners that a fact which has been accepted by the State Counsel also is that the petitioners were working against the vacant sanctioned posts, a further fact which has also not been controverted is that the petitioners had been discharging their duties satisfactorily rather certain annexures to the writ application have been relied upon to show that Additional Secretary, Finance Department had in his earlier letter objected that in view of subsequent decision of the State Government not to depute persons from Boards/Corporations to the State Government after 16-11-1999 if the persons who were posted in treasuries for absorption are sent back to their parent department, the work of the treasuries would suffer a further fact which has also not been disputed is that similarly situated persons who had also faced scrutiny, interview

and subsequently deputed in the treasuries prior to 16-11-1999 their services were being retained by the treasuries and their deputation were not being cancelled. In view of aforesaid submissions it has been prayed that as their parent department has already become either sick or they were surplus staff in those Corporations/Boards their repatriation would not only make them suffer but works of the State would also suffer. It has further been contended that they should not be discriminated against and should be treated equally to the persons similarly situated who had also been sent on deputation for absorption prior to 16-11-1999.

9. Learned State Counsel, on the other hand, has contended that it is well-settled principle that deputationist does not have any right. He has cited a catena of decision in support of the aforesaid decision. According to him, as petitioners are also deputationist they do not have any right to the post of deputation, as such, they cannot challenge the order of their repatriation to the parent department. Said order cannot be said to be punitive.

10. The aforesaid submissions cannot be disputed and Counsel for the petitioners have also not challenged the aforesaid proposition. The dispute which is required to be adjudicated is as to whether the present deputation is a plain deputation. It is a fact that in view of policy decision of the State and a resolution of the Finance Department, the Corporation and the Boards who were having surplus staff or were sick, were directed to give the name of persons who were qualified to be posted in the different treasuries of the State for the purpose of appointment/absorption on a vacant post. It is also not in dispute that for the aforesaid purpose though for appointment as Treasury Assistant, the minimum qualification was Matriculate but in the present case, the same was raised to Graduates, experience was also required for the same, age bar was also mentioned. Subsequent thereto when a panel of name was received from different Corporations/Boards, an Interview Board was constituted, selection process was gone into and all of them were not selected rather as has been stated in one of the writ applications, out of such 20 candidates were called for, only 7 were selected. The decision which has been taken clearly mentioned that they would be on a deputation till the vacancies were filled up on a permanent basis or their services were absorbed in the Treasuries. Conditions were also laid down that in the

circumstances if their services were not found to be satisfactory they could be repatriated to the parent department.

11. Present repatriation is neither for the reason that the vacancies have permanently been filled or the services of the petitioners were not found to be satisfactory rather the letter of the Additional Secretary, Finance Department would show that they were discharging their works satisfactory and if they were repatriated, the work in the treasury would suffer.

12. In view of discussions as made above, this Court is not satisfied with the argument of the State Counsel that the petitioner's case was that of simple deputation having no right and they can be repatriated on the sweet will of the State. The same cannot be accepted. The present deputation was for absorption and the petitioners have discharged their duties satisfactorily after facing of hazardous selection process. Their deputation cannot be equated with other deputations which are for a fixed period and which can be cancelled at any time and the persons sent back to their parent department. On this ground the writ application cannot be dismissed.

13. Now the question which requires to be considered is that the circular of the Finance Department dated 16-11-1999 which debars the deputation in the State Government from the Corporation/Boards under the Bureau of Public Enterprises, as the order of deputation of the petitioners are subsequent to 16-11-1999 on that ground alone whether the same can be held to be bad and their repatriation valid. Deputation on a post does not give any right to a person. Said deputation is for a fixed time and can be recalled even before the lapse of the aforesaid time but deputation for absorption after going through a selection process is entirely a different matter that too when the same has been done in a Welfare State to safeguard the Corporation/ Board from financial crunch. Names were called for of the surplus staff of these Corporations and Boards and from those Corporation/Boards which were sick. Sending these petitioners back would also mean as to whether their parent department was in a position to pay their salary and take work from them. It would only result in unsettling a settled employee, virtually resulting in his dismissal and bringing his family and dependents on road.

In view of the aforesaid facts, this Court has to hold that under the policy decision of the State, deputation of persons subsequent to 16-11-1999 from the Corporation/Board should not be done ordinarily but the same does not cover persons who have been deputed for absorption in view of their being declared surplus or their parent organization sick. The only ground on which their repatriation to the parent department could have been considered would have been if these posts were permanently filled or their services were not found to be satisfactory. As these conditions do not appear to be there for passing of impugned order, this Court has no hesitation in quashing the order as contained in Annexure-7 to C.W.J.C. No. 7901 of 2002 and Annexure-5 to C.W.J.C. 947 of 2002.

14. As interim order was already there and the petitioners have not been disengaged/repatriated pursuant to impugned orders, they will deem to continue as if these orders were not passed.

15. These two writ applications are allowed to the extent indicated above.

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