
(1995) 09 PAT CK 0046

Patna High Court

Case No: C.W.J.C. No. 7039 of 1988

Krishna Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 7, 1995

Citation: (1996) 1 PLJR 2

Hon'ble Judges: R.M. Prasad, J

Bench: Single Bench

Advocate: Uma Shankar Pd, for the Appellant; G.P. Roy, A.B. Singh and Prabhat Kr. Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.M. Prasad, J.

This writ application is directed against the order of the Project Co-ordinator of Tube-well Project, Minor Irrigation, Patna (Respondent No. 3), contained in Memo No. 2498 dated 8.9.1988 at Annexure 7, whereby the Petitioner, who was Accountant at Tube-well Construction Division, Ara, has been transferred to Tube-well Division, Begusarai, due to administrative reasons.

2. It appears that this writ petition was first time heard on 16.9.1988, when three weeks time was granted to the learned Standing Counsel to obtain instructional and file counter affidavit, if any, so that that application may be disposed of at the admission stage itself. In the meantime, status quo as obtaining on that date was ordered to be maintained by a Division Bench of this Court. The stay matter was further heard on 11th October, 1988 by a Division Bench which clarified that the status quo, on the facts of this case, means that the Petitioner continues in his office as the Divisional Accountant and shall not be disturbed until further order is passed in the writ application. Thereafter the matter was never posted.

3. In 1994 when by an order dated by 26.8.1994 vide Annexure 4 to M.J.C. application, the Petitioner was sought to be transferred from Tube-well Division, Chapra to Tube-well Division, Darbhanga, on M.J.C. application, being M.J.C. No. 1426 of 1994. was filed in this Court. By an order dated 20.7.1995, the contempt proceeding was however, dropped, but the Division Bench of this Court directed for listing of the writ application which was seven years old before me in the next weeks as first case, subject to part heard, if any. On 3.8.1995 the writ application was listed before me and from the office note, I was surprised to find that the original High Court file of the writ application had already been destroyed, as was reported by the Record Room, although the writ application was pending for admission itself. However, in the said circumstances, I directed the matter to be placed before a Bench, presided over by Hon"ble Chief Justice, which had passed order on 20.7.1995 further direction. On 9.8.1995 the Division Bench directed for reconstruction of the record and accordingly, the matter was placed before me on 28.8.1995 after the record was reconstructed. Then learned Counsel for the Petitioner and the State were heard and the order was reserved.

4. In short, the facts, as claimed by the Petitioner in the writ application, are that initially in the year 1970 he was appointed as Junior Accounts Clerk in Tube-well Mechanical Division of Minor Irrigation Department at Chapra. In February, 1973 the Petitioner claims to have been promoted to the post of Senior Accounts Clerk and in February, 1980 as Divisional Accountant in the Water Development Corporation which has been created by the State Government in the year 1979. Subsequently, because of dissolution of the Corporation, the service of the Petitioner along with the services of other employees of the Corporation was taken over by the Government with effect from 13th August, 1986. Thereafter the Petitioner was posted in the Tube-well Construction Division, Sasaram which in April, 1987 was itself shifted to Arrah and the Petitioner, also by virtue of said shifting came to Arrah, in April, 1987. It is stated that for the purpose of complying with the Financial Rules, the State Government, vide letter No. 6635 dated 6.11.1987, accepted the Petitioner and five others in the cadre of Divisional Accountants as contemplated by the letter contained in Annexure 1, and the Accountant General granted necessary approval in regard to the same and thus, the Petitioner claims to be an employee belonging to the cadre of Divisional Accountants under the control of the Accountant General, Bihar. It is also stated that the normal tenure of the Divisional Accountant under service condition is of three years at a particular place of posting and the Petitioner had not completed his tenure of three years at Arrah when by the impugned order he was sought to be transferred.

5. Later, it appears that the Petitioner was sought to be transferred to Water Ways Division, Chapra and lastly, from Chapra to Water Ways Division, Darbhanga, vide Annexure 13, by the Chief Engineer (North), which has also been assailed by the Petitioner by filing an amendment petition.

6. According to the Petitioner, the power of his transfer vests only in the Accountant General, Bihar and not in any authority of the State Government and thus, both the said orders, Annexure 7 to the writ application and Annexure 13 to the amendment petition, are wholly without jurisdiction and fit to be quashed. It is alleged that the impugned orders of transfer have been passed malafide in order to cover up the gross financial irregularities committed by the concerned officers.

7. A counter affidavit has been filed on behalf of the Project Co-ordinator of Tube-well Project, Minor Irrigation (Respondent No. 3) in Which it is stated that the Petitioner was an Accountant in the Construction Division, Arrah under the Tube-well Project of Water Resources (Minor Irrigation) Department and that he was transferred from Arrah to Begusarai on the same post on administrative grounds and not as a measure of punishment. Thereafter the Petitioner proceeded on long leave for one month on the ground of his mother's illness and in the meantime, Respondent No. 7 joined the post of Accountant at Arrah on 13.9.1988. As regards the claim of the Petitioner that he was promoted as Divisional Accountant, it is stated that no post of Divisional Accountant exists in any Division of the Tube-well Project and the Petitioner has falsely stated that he belongs to the cadre of Divisional Accountant under the administrative control of the Accountant General, Bihar.

8. As regards the aforementioned letter No. 6264 dated 19.10.1987 of the Finance Department it is stated in the said counter affidavit that the said Department had recommended to absorb the services of some Accountants, including the writ Petitioner provided they fulfilled, the condition laid down therein, In the cadre of Divisional Accountant, but the decision of the Accountant General on the said recommendation has not yet been received. In regard to letter No. 6635 dated 6.11.1987 of the Finance Department, addressed to the Treasury Officer, Arrah, whereby It had intimated the decision of the State Government in anticipation of the approval of the A.G. Bihar to treat the work done by the Accountants under reference as valid, it is stated that the approval of the A.G. has not yet been received. The claim of the Petitioner that the Accountant General, Bihar has also granted necessary approval and that he is now the employee belonging to the Accountant General's Office has been emphatically denied. In paragraph 12 of the counter affidavit it is stated that the time scale of pay of the Divisional Accountant is Rs. 1400-2600 whereas the Petitioner is holding the post of Accountant in the pay scale of Rs. 850-1350 and is fully under the administrative control of the Project Co-ordinator. It is also stated that the, Petitioner in his, joining report address himself as Accountant.

9. According to the Respondent No. 3 the transfer of the Petitioner was made on administrative grounds by a competent authority and tenure of three years is not mandatory for transfer on such grounds. The allegation of malafide has been emphatically denied by the said Respondent, who in paragraph 19 of the counter

affidavit, has stated about the alleged bungling in execution of modernisation scheme. The Chief Engineer (South) on the direction of the Respondent State held detailed enquiry and after examining his report, the Respondent State has already directed the Chief Engineer to frame charge against the persons concerned.

10. The main question which arises for consideration, in the instant case, is as to whether in relation to such a transfer, the power of transfer vests in the Accountant General or in the Authority of the State.

11. On repeated queries as to by which order the Petitioner was appointed as Divisional Accountant, learned Counsel for the Petitioner could not refer to any. However, in support of his contention that the Petitioner was promoted to the post of Divisional Accountant, he placed reliance on Annexures 15 and 19. Annexure 15 appears, to be an audit inspection report of the Accountant General, Bihar, Chapra Division of the year 1994-95. In the said audit report as against the name of the Divisional, Accountant it is mentioned "Sri Krishna Kumar since last audit to date". Annexure 19 is an order dated 19th August, 1991 passed by the Supreme Court in Civil Appeal No. 8189 of 1991 in which the Petitioner and few others were Appellants.

12. It is true that in the said order the Supreme Court has stated that the Appellants have been working as Divisional Accountant in the Public Works Department of the State of Bihar but from very perusal of the said order, it should appear that the recommendation for absorption of the Appellants as Divisional Accountants was rejected and they continued to work under the State Government under the statutory rules. Further, from the said order it appears that under the statutory rules the post of Divisional Accountant is governed by rules and direct recruitment is only method of appointment to the cadre of Divisional Accountant. The Supreme Court has also noticed that because of the age bar the Appellants are not eligible to compete for direct recruitment to the cadre of Divisional Accountants. However, considering the fact that the Appellants have been working as Divisional Accountant as also the fact that the State Government has recommended their absorption their Lordships of the Supreme Court directed that the age bar in the case of the Appellants to be relaxed as it was noticed that there is provision for relaxation under the rules. The Court also directed that the Appellants, be given, two chances to compete, for recruitment to the cadre of Divisional Accountant and the age bar shall not come in the way. The judgment of the Central Administrative Tribunal under appeal was modified to, that extent.

13. Thus, from the said order of the Supreme Court also it is apparent that the Petitioner was not promoted as Divisional Accountant in the Water Development Corporation in February, 1980, as claimed by them in paragraph 3 to the writ application.

14. It might be true that some work might have been taken from the Petitioner as Divisional Accountant but the fact remains uncontroverted that no post of Divisional Accountant in any division of Tube-well Divisions exists and/or that the Petitioner was never appointed/promoted as Divisional Accountant. It is also not disputed by the Petitioner that the time scale of pay of the Divisional Accountant is Rs. 1400-2600 whereas the Petitioner is posted in the pay scale of Rs. 850-1350.

15. Various rules referred to by the learned Counsel for the Petitioner from Chapter XX of the Manual of the Works Audit Department of the Office of the Accountant General, Bihar regulating the organisational examination of the cadre of Divisional Accountant as well as the provisions from the Comptroller and Auditor General's Manual of Standing Orders have no relevance to the facts of the present case as the said rules are only concerning the persons appointed as Divisional Accountants.

16. As I have already held that the Petitioner was never appointed/promoted as Divisional Accountant, I do not consider any necessity of dealing with the aforesaid provisions referred to by the learned Counsel for the Petitioner, in the instant case.

17. Accordingly, I do not find any infirmity in the impugned order and the writ application is, thus, dismissed. However, as I find that the Petitioner has been working at the same place since before 1988 when the interim order of stay was passed for his transfer but at the same time I do not find as to what is the position regarding the post to which he was transferred under the impugned order, I direct the State Government and/or its competent authority to pass fresh order, if necessary, in accordance with law immediately.