

(2000) 03 PAT CK 0160

Patna High Court

Case No: C.W.J.C. No"s. 4282, 5371, 5802 of 1998

Shashi Kumar Singh (in 4282),
Purushottam Prasad Sharma (in
5371) and Dharmnath Singh and
Others (in 5802)

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: March 31, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 235, 309

Citation: (2000) 4 PLJR 320

Hon'ble Judges: N. Pandey, J; A.K. Verma, J

Bench: Division Bench

Advocate: Shivaji Pandey in 4282, Mr. Banwari Sharma in 5371, M/s. Shrawan Kr. Singh and Binay Kirti Singh, for the Appellant; V.N. Sinha for the State, M/s. R.B. Mahto and Shivendra Kishore for respondent High Court, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. All the petitioners in these cases are aggrieved by the impugned orders, whereby and where under, they have been transferred from one judgeship to other. Since facts and law on which these writ petitions have been grounded are almost common, therefore, they have been heard together and are being disposed of by this order. It would appear from the materials on record that petitioners are working in the cadres of Class III & IV posts of different districts. It would further appear from the impugned orders, such transfers had taken place in view of the decision of the Standing Committee of the High Court purely on administrative grounds.

2. The prayer of the petitioners is for a direction that the impugned orders are wholly illegal and without jurisdiction with a further prayer to declare Rule 53 of the Bihar Civil Courts Staff (Class III & IV) Rules, hereinafter called as "the Rules" where under the High Court assumed jurisdiction for transfer of the employees from one judgeship to other, as wholly illegal, without jurisdiction and ultra vires to Article 309 of the Constitution. Because the High Court under Article 235 has no power and/or jurisdiction to frame such a Rule and assume jurisdiction for transfer of Class III and IV employees from one judgeship to other.

3. Before advertng to the crucial contentions raised on behalf of the parties, as would appear from the materials on record, previously there was no codified Rules relating to recruitment, promotions, seniority, confirmation, transfer etc. for the Class III & IV staffs employed in the Civil Courts in this State, as a result of which various difficulties were being experienced in the day-to-day administration. It was also noticed that due to the absence of codified Rules, the recruitment, promotion, confirmation etc of such employees were being made on the basis of stray circulars and instructions, issued from time to time. Therefore, in order to streamline the administration of the civil courts, the Full Court of this Court framed the "Bihar Civil Courts Staff (Class III& IV) Rules", as notified in the Bihar Gazette under notification no. 292 Misc. dated 3rd October, 1992. These Rules were, in fact, ancillary Rules having been framed under Article 235 of the Constitution, according to which the High Court has the total and absolute control over sub-ordinate judiciary, including the office staffs, employed in the district courts and courts sub-ordinate thereto.

4. As per Rule 53 of the above Rule, a provision was made for transfer of Class III & IV employees of the district courts and sub-ordinate courts thereto from one place to other. In terms of Sub-rule (A) of Rule 53 of the Rules in case of any administrative exigency and/or in public interest, on the recommendation of the District Judge concerned or otherwise, the Standing Committee of the High Court was empowered to transfer any employee from one district to another. As per Sub-rule (b), an employee at his own request may be transferred to another judgeship, provided, however, in such a case his position shall be last in the concerned gradation list of the categories of such employees to the transferred judgeship. Sub-Rule (c) empowers the Standing Committee of the High Court to fill up any post in consultation with the District Judge concerned by transfer of a person holding a post in another judgeship, corresponding to a post in the cadre concerned and Sub-rule (d) is the power of a District Judge to effect transfers within his own jurisdiction, including the transfer of office bearers of any association or union.

5. It would be significant to notice that the State Govt. also in exercise of the powers conferred by the proviso to Article 309 of the Constitution has framed the Rules as noticed in the official Gazette, known as "Bihar Civil Courts Staff (Class III & IV) Rules, 1998" a copy of which is Annexure-6 to C.W.J.C. No. 5371 of 1998. Rule 17 of the aforesaid Rules is a provision for transfer of the employees, both inter-districts and

intra-districts. A comparative look of the present Rule 17 as well as the corresponding Rules framed by the High Court, it would appear that Sub-rules (a), (b), (c) and (d) of Rule 53 of the Rules framed by the High Court under Article 235 are the same as of Rule 17 (i), (ii), (iii) and (iv) of the Rules framed by the State Government under Article 309. For a better appreciation, it would be appropriate to quote Rule 17, as now stands herein below:

17. Transfer,-(i) Transfer of the employees (inter District or intra District) shall be made in the following manner:

(i) In administrative exigencies/and or in public interest, on the recommendation of the District Judge concerned or otherwise, the Standing Committee may transfer any employee from one district to another.

(ii) The employee at his own request may be transferred to another Judgeship by the Standing Committee provided, however, that in such a case, his position shall be last in the concerned gradation list of categories of such employees in the transferred Judgeship.

(iii) The Standing Committee of the High Court may in consultation with the District Judge concerned fill up any post by transfer of a person holding a post in another Judgeship corresponding to a post in the cadre concerned.

(iv) The District Judge may effect transfer within his own jurisdiction including the transfer of office bearers of any Association or Union.

(v) The appointing authority may, on the application of a holder of post of Junior Selection Grade i.e. Junior Selection Grade Clerk, Typist and Stenographer, transfer him to another unit.

From a bare reference to Sub-rule 59 (a) of Rule 53 of the previous Rules as well as Rule 17 (1) (i) of the Rules, framed under Article 309, it would appear that the Standing Committee of the High Court is authorised to transfer any Class III or IV employee from one district to other in administrative exigency and/or public interest on the recommendation of the District Judge concerned or otherwise.

6. Rule 27 of the Rules framed under Article 309 provides savings of the actions taken or any other order, passed in accordance with the previous circulars, rules, orders, directions passed by the authority, defined under Rule 2 of the Rules, which can also be noticed as under:

27. Savings.-Notwithstanding any order in consonance with the working of the Civil Courts made in exigency of administration including appointment, transfer, posting, disciplinary action and any other order, ancillary or consequential thereto in accordance with the existing circular, rules, order or direction and passed by any authority defined in rule 2 of these Rules, the same shall be deemed to have been made under these Rules and to that extent action taken thereto are saved and,

accordingly, any order issued under any such powers of the authority defined in Rule 2 of these Rules and in force immediately before the commencement of these Rules shall continue in force until and unless they are superseded under these Rules by order passed by the authority defined in Rule 2 of these Rules.

7. From a bare reference to the aforesaid provisions, it would appear that notwithstanding any order in consonance with the working of the civil courts made in exigency of administration including appointment, transfer etc. in accordance with the previous circulars/orders by an authority defined under Rule 2 shall be deemed to have been made under these Rules and to that extent actions taken thereto are saved. Rule 2 defines various categories of authorities, such as, appointment committee, Co-ordination Committee District Judge, Selection Committee, including the "Standing Committee of the High Court" as constituted under Chapter-I of the Patna High Court Rules.

8. Undisputedly as would appear from the impugned orders as well as the averments on behalf of the parties that impugned decisions of transfer of the petitioners from one judgeship to other was taken by the Standing Committee of the High Court on the recommendation of the respective District Judges, having regard to the administrative exigencies. From the averments made in the counter affidavit on behalf of the High Court would further appear that such transfer are neither punitive nor the actions so transferred would be loser of their financial benefits and status or seniority.

9. A grievance was of course made in these writ petitions that The Patna High Court had no jurisdiction to come with Rules in exercise of its power (sic) under Article 235 of the Consignor fact, it was the exclusive jurisdiction the State under the proviso to Article of the Constitution to frame any Rule regarding recruitment, promotion, confirmation, transfer etc, of the employees, of the Civil Courts. But in my view since the State Government also in exercise of its power under Article 309 has framed the "Bihar Civil Courts Staff (Class III & IV) Rules virtually at par to the Rules framed by the High Court, such a question was now become academic. Because from it bare reference to Rule 17 of the Rules, as framed under Article 309 it would appear that the Standing Committee of the High Court has the full jurisdiction to take decision for such transfers in administrative exigencies and/or in public interest if any recommendation is made by the respective District Judges.

10. Rule 27 of the said Rules and have already noticed, provides savings for all such actions, orders including appointment, transfers, postings in accordance with the existing circulars, rules, order or direction passed by any authority defined in Rule 2 of the Rules. Therefore, even assuming for the sake of argument that the High Court had no jurisdiction to frame such a rule in exercise of powers conferred under Article 235 by virtue of Rule 27 of the Rules, as framed under Article 309 by the State Government, previous decisions of the Standing Committee and the impugned orders passed by the District Judges regarding transfer of the petitioners from one

judgeship to other, shall be deemed to have been made under these Rules, and to that extent action taken thereof are saved and shall continue to be enforced until and unless they are superseded under these Rules by any order passed by the authorities defined under Rule 2 of these Rules.

11. It will not be out of place to mention that in view of various decisions of the Apex Court, the word "control" over all Sub-ordinate courts, as provided under Article 235, undisputedly the High Courts are vested with powers to deal with appointment, transfer, promotion and other service conditions of the persons in judicial service and also to have control over all Sub-ordinate courts. The word "control" in its normal meaning is wide enough to include the administrative control over Sub-ordinate courts including persons in ministerial service. Therefore, keeping in mind the facts stated above, undisputedly the Rules framed by the High Court under Article 235 was, in fact, ancillary and procedural, hence the same can not be treated in conflict with the Rules framed under Article 309 of the Constitution.

12. It was, however, contended on behalf of the petitioners since the Rules framed by the High Court under Article 235 was unconstitutional, hence any action taken on the basis of such Rules cannot be saved under the provisions of Rule 27 of the Rules under Article 309. If the High Court had no power to regulate the service condition of the employees of Sub-ordinate judiciary, any attempt to give the retrospective effect of Rule 27 to save the impugned decision would be illegal and arbitrary. In support of such a submission a reference in this regard was made to the decisions of the Apex Court in the cases of Supreme Court Fourth Class Employees Welfare Association vs. Union of India and anr., AIR 1990 SC 334, [High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another](#), ; [The State of Mysore Vs. Padmanabhacharya etc.](#), and yet another decision in the case of [State of Mysore Vs. M.H. Krishna Murthy and Others](#), . In these cases nothing has been pointed out that Rules framed by the State Government under Article 309 to approve all actions taken under the previous Rules or circular, orders passed by the authorities defined under Rule 2 would offend Articles 14 and 16 in any means. Similarly the case of State of Mysore (supra) has also no application to the facts of the present case. In that case a notification was issued by the Government to invalidate the Rule, whereby certain persons had retired on attaining the age of superannuation so that they may be deemed to have been in service. It was held that such a notification was illegal as the proviso to Article 309 does not contemplate such a power. Therefore, in my view, none of the decisions referred to above are applicable to the facts of the present cases.

13. It was then contended since petitioners are the employees of a district cadre of the concerned judgeships, therefore, in case of their transfer to other judgeships they would lose their seniority. It has pointed out that having regards to similar eventualities, this court while examining the grievance of the employees of Rajendra Agriculture University in the case of Ram Ashis Ram vs. Rajendra Agricultural

University & ors., 1993 (1) PLJR 89 and yet another case with respect to the employees of the Health Department, Government of Bihar, in [Md. Kalimullah and Others Vs. State of Bihar and Others](#), had held that the employees maintaining district cadres cannot be transferred outside their cadre, otherwise such transfers would be invalid being violative of Article 16 of the Constitution. In my view, a plain reading of these decisions, it would appear that the views expressed in those cases may not be applicable to the facts of the present cases. In those cases no statutory Rule was brought to the notice of the Court so as to provide transfer of an employee from one cadre to the other, without his consent. Therefore, it was held that in absence of a statutory Rule or circular for transfer of any employee of one cadre to the other, impugned transfers cannot be proper without the consent of the concerned employee. Whereas, as noticed above, either in the previous Rule 53 as was framed under Article 235 or the Rule 17, which has been framed by the State Government under Article 309 of the Constitution specific provisions have been made for the transfer of the employees, both inter-districts and intra districts either it be in administrative exigencies and/or in public interest or even at the request of the concerned employee.

14. Coming to the apprehension of the petitioners that they would lose their seniority in case of such transfers, in my view, has also no basis. Because as pointed out by the Senior counsel appearing for the High Court, from a bare reference to Rule 17 (1) (ii) of the Rules under Article 309, it would appear that an employee, who is transferred from one judgeship to other at his request will be placed at the bottom in the concerned gradation list of categories of such employees in the transferred judgeship. There is no such condition with respect to the transfers which are made under Rule 17 (1) (i) or (iii) of the said Rules. The petitioners are not going to lose their seniority because of the impugned transfers.

15. Learned counsel also pointed out that similar transfer orders were challenged by the employees of other judgeships vide C.W.J.C. Nos. 3852 of 1997 and 3915 of 1997. Both the writ applications were dismissed on 23.9.1997 holding that in view of the well settled law, if employees are transferred to different cadres in administrative exigencies or public interest, the seniority of the transferred employees will not be disturbed and in absence of any Rule, they will be placed in the cadre according to their position in the seniority list on the basis of the date of appointment. The above mentioned order was also upheld by a Division Bench, while dismissing L.P.A. No. 1395 of 1997 and L.P.A. No 1407 of 1997. That apart, no such stand has been taken on behalf of the respondents in their counter affidavits that petitioners would be losing their seniority. Therefore, in my view, there appears no substance in this submission as well.

16. Apart from what has been noticed above, it is well settled that with respect to the transfers, which are made in the exigencies of service or on administrative grounds, the courts should not interfere unless the orders are against the statutory

provisions or there is a case of strong malafide against the authority, which took decision for transfer. In these cases admittedly such decisions were taken by the Standing Committee of the High Court. No allegation of malafide has been made against the Standing Committee. Therefore, on mere technicalities, if any, there cannot be any justification to issue a futile writ. For the foregoing reasons, I find no justification to interfere with the impugned orders. Accordingly, as a result of such a view, all the writ petitions are dismissed as devoid of any merit.