

(2008) 10 PAT CK 0043

Patna High Court

Case No: CWJC No. 13710 of 2006

Tapeshwar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Oct. 22, 2008

Citation: (2009) 2 PLJR 554

Hon'ble Judges: Ajay Kr. Tripathi, J

Bench: Single Bench

Advocate: Rajendra Pd. Singh, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Order dated 9.10.2006 contained in Annexure-11 by virtue of which the respondent-State Government has repatriated the petitioner to his parent department which is Bihar State Industrial Development Corporation and refusal of Industries Department to absorb him in the department is under challenge in the present writ application. Petitioner wants quashing of this order and a direction upon the respondent-Department of Industries, Government of Bihar to absorb his services permanently. On 12.7.1994 petitioner came to be appointed on the post of Account Assistant in the Bihar State Industrial Development Corporation (hereinafter referred to as the Corporation). The Corporation in question is an instrumentality of the State and similar kind of service conditions were available to the employees of the Corporation as State Government. Some time in the year 1998 petitioner with some other employees of the Corporation were deputed to the Industries Department, Government of Bihar. The above fact is corroborated by the order contained in Annexure-1 to the writ application. Though the petitioner was required to serve in the Industries Department at the headquarters, his salary etc. was to be paid from the Corporation itself. Many other employees of the Corporation were also deputed in other departments of the State Government. On

deputation they joined the said post as directed. Petitioner continued to work in the Industries Department but since the Corporation fell in bad times his salary was not being paid regularly. As per the case of the petitioner many persons like him were deputed to various Departments of Government of Bihar under certain compulsion at the relevant time, primary being that majority of them had gone defunct or were in bad financial situation. It seems that people were being accommodated on deputation to the Departments for the reason that there was nothing to look forward by staying in the Corporations and such bodies. Some kind of policy decision therefore was taken that only those persons who have been on deputation prior to 16.11.1999 would be absorbed or regularized. Petitioner's payment of salary was worked out by making arrangement from the office of the District Industries Centre of Jehanabad but his status and the question of his absorption in the Industries Department was not set to rest. His case is that since he came to be deputed in the Department on 24.11.1998 which is prior to 16.11.1999 he had a kind of right to be absorbed in the department itself and not be sent back as has been done by the impugned order contained in Annexure-11.

2. Petitioner has also pleaded discrimination in such decision making. His case is that some similarly situated, if not juniors to the petitioner, who came to be deputed with other departments of the State Government have been absorbed in those departments and they have become Government employees but by taking a decision impugned, the petitioner has been pushed back to the Corporation after having worked for almost 7-8 years. The issue therefore for consideration of this Court is whether the petitioner has valuable and substantive right for absorption by the Industries Department itself or could he be relegated to the Corporation which is parent department of the petitioner.

3. The Department of Industries, Government of Bihar has filed a detailed counter affidavit. They contend that the order contained in Annexure-11 has been passed after due deliberation and application of mind. This order is in the background of a direction which was issued by the High Court in an earlier writ application filed by the petitioner which is CWJC No. 5914 of 2006. The order has been brought on record as Annexure-8 to the writ application.

4. Submission on behalf of the State is that the petitioner had made certain misleading statement before the Court and since the counter affidavit and the stand of the State could not be brought on record within the given time-frame, the Court disposed of the writ application with a direction upon the State to decide the issue. They have stated that similarly situated other employees have also been repatriated to the parent department and in absence of any regular post available in the Industries Department the petitioner cannot be absorbed by the State Government. Petitioner was on deputation which he does not deny and he is an employee of the Corporation in question and since the Industries Department has not absorbed any person from any Corporation till date there is no occasion for them to do so now,

more so when the Industries Department has not discriminated this petitioner vis-a-vis any of the employee. Petitioner has been trying to make out a case of discrimination which was the primary reason why the Court in its earlier order dated 20.7.2006 directed the respondents to examine the matter from that angle also but since the bluff of the petitioner has been caught which would be evident from bare perusal of Annexure-1 there is no violation of any constitutional or legal right of the petitioner.

5. Respondents have also indicated that there are certain employees from some Corporations including the present Corporation in question whose names were recommended by way of some policy itself by the Finance Department but then the Department of Industries where the petitioner was on deputation cannot be forced to adopt a similar kind of policy more so when they have no role to play in such decision making. It is not the case of the petitioner that he wanted to be absorbed in any department of the Government but his specific relief is directed against the Industries Department. Even otherwise bare look at some of the decision taken in favour of some other employees would show that this was much prior to time when the petitioner approached this Court or any opinion or decision was rendered vis-a-vis his case.

6. No doubt petitioner was sent on deputation to work under the Industries Department but there is nothing to show that this was done on an assurance or any kind of policy decision taken at the appropriate level which created right in favour of the petitioner to be absorbed and become State Government employee, when his initial substantive employment was under the Corporation which still exists. The utilization of the man power in the given facts and circumstances prevalent at the relevant time is a matter of policy which is not under challenge at this stage. Petitioner's claim is based on the surmise that some kind of decision was taken to absorb some of the employees from this Corporation or some other Corporation to be accommodated in some departments of the State, he too be given a similar kind of treatment. But then the petitioner has not been able to show or establish which is also evident from a reading of the impugned order that out of five persons who came to be sent on deputation to the Industries Department any one has been permanently absorbed thereafter by the Industries Department. If the Industries Department does not have the sanctioned post nor is there a decision of the State Government in this regard to absorb and appoint the petitioner an employee of the Corporation as permanent employees of the State Government then in the opinion of this Court there is some difficulty in passing an order or direction asking the Industries Department to absorb the petitioner in a substantive capacity in the department even though there is no sanctioned or vacant post. The discrimination being talked about by the petitioner has no bearing to the present facts and issues of the case even otherwise since the services of the petitioner was not available with the Corporation at the relevant time when some of the employees have been appointed by the Finance Department. Petitioner cannot claim that while taking a

decision in March 2006 he had been kept out of the zone of consideration and his name was not recommended to the Finance Department for consideration when he was not even posted in the Corporation. Claim and demand of the petitioner is not against the Finance Department but against the Department of Industries. Keeping in mind the stand and the decision taken by the respondents petitioner has failed to make out a case for issuance of a mandamus in absence of any legal or fundamental right existing in his favour for being absorbed as a permanent employee of the Industries Department. The writ application has no merit and the same is dismissed as such.