IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1733 of 2006

Ashok Kumar, son of Jagdish Prasad, resident of Bhikhana Pahari Saidpur, Kachariwala Gali, PS – Kadam Kuan, Patna - 4

... ... Petitioner/s

Versus

1 The State of Bihar through the Commissioner -cum- Secretary, Finance Department, Government of Bihar, Patna
2 The Additional Secretary (Expenditure), Finance Department, Government of Bihar, Patna
3 The District Magistrate, Muzaffarpur
4 The Treasury Officer, Muzaffarpur Treasury, Muzaffarpur
5 Bihar State Food & Civil Supplies Corporaion through the Managing Director

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr Dilip Kr Tiwary, Advocate
For the S t a t e	:	Mr S S P Yadav, SC XIV
For the Corporaion	:	Mr Shailendra Kumar, Advocate

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date : 01-11-2018

Heard Mr Dilip Kumar Tiwary, on behalf of the petitioner, Mr S S P Yadav, SC XIV for the State as well as Mr Shailendra Kumar on behalf of the Bihar State Food & Civil Supplies Corporation Limited.

2 The brief factual background of the instant case is that on account of discovery of severe financial irregularity from the different Treasuries, which came to be known as "*fodder scam*", grave concern was expressed by the Department of Finance as well as the office of the Accountant General. Work in the Treasuries were mounting and it was felt that immediate steps were required to streamline the functioning of the District Treasuries in Bihar. For augmenting the work force in the

Department, a requisition was made on 01.03.1996 by the then Finance Commissioner from different Boards/Corporations. The Finance Department requisitioned employees, who were Graduates having five years Accounting work experience, for their deputation in the different Treasuries in the State.

3 Pursuant thereto, on 24.08.1996, it was decided to depute the various employees of the different Boards and Corporations including the petitioner at the different Treasury offices in the State of Bihar.

4 From perusal of the decision of the State Government contained in the letter dated 24.08.1996 issued by the Director, Treasuries and Accounts Directorate -cum- Additional Secretary, Finance Department, Government of Bihar, Patna addressed to various Boards and Corporations, it would be quite evident that the deputation of the employees of the Board and Corporations, including the petitioner was preceded by an evaluation of merit of the employees. Only those who were 45 years or less on the cut off date 01.07.1996 had been considered. The requisite qualification was M Com/B Com. As regards payment of salary and other terms and conditions, it was clearly stipulated in the decision to depute the petitioner along with others that they would be getting their own pay scales, but from the Treasuries from where they were being posted. It was also contemplated that till such time they were not absorbed against sanctioned posts, they would have no claim to promotion to the higher posts in the Treasury. All other service conditions as well as disciplinary control applicable for State Government employees was to apply to the petitioner and other deputationists. They were entitled to no special pay. They were required to acquire Computer proficiency. Finally, it was contemplated that annual assessment was to be undertaken of their work performance in the Treasuries and on a report showing satisfactory performance, the deputation of the employees including the petitioner was to be extended every two years. Their payment was to be made from the budgetary provision from which other Treasury employees were to be paid. Thus, the deputation of the petitioner under the policy decision of the Government dated 24.08.1996 vested a right in the petitioner for consideration of his case for absorption upon availability of sanctioned posts in the Treasury. The clear intention of the decision dated 24.08.1996 was that the petitioner had been deputed pursuant to evaluation of his merit as per the requisite qualification in the various Treasuries with a view to his absorption in the Treasury under the State Government, subject to performance of satisfactory service.

5 The petitioner, thereafter, continued to perform his duties at the Muzaffarpur Treasury, subsequent upon his joining there on 17.09.1996.

6 The petitioner had been deputed from the Bihar State Food and Civil Supplies Corporation Limited (for brevity, *the Corporation*). Prior to his deputation, he had been in the services of the Corporation since 16.05.1983 to 16.09.1996.

7 The decision dated 24.08.1996 was of the Directorate of Treasury. A conscious decision was taken that the deputation was being made till such time that they were absorbed against the sanctioned posts. Apart from that, it was also decided that their work would be regularly assessed and their deputation would be extended on the basis of their appraisal periodically. The petitioner and others were governed by terms and conditions of the State services.

8 It would be relevant to mention here that vide Memo No 6695 dated 29.09.2001 of the Finance Department, it is evident that keeping in view the acquired experience by the petitioner and others in the Treasury, the Finance Department, vide Memo No 6695 dated 29.09.2001 was contemplating absorption of the persons who had been brought on deputation in the various Treasuries. This decision dated 29.09.2001 also clarifies the true nature of their deputation for the purpose of absorption. It states in clear and unequivocal terms that prior to repatriation of such persons (including the petitioner), it was mandatory to seek directions of the Finance Department. Thus, repatriation, under the scheme/policy of petitioner's deputation, was not possible without prior direction of the Finance Department.

9 In furtherance of the Government's intention, proposal was made by the Finance Department on 08.08.2005 for approval of the Government for appointment by way of absorption of petitioner along with other deputationists against the Grade III posts in the Treasuries by relaxing the age criteria. The same was approved by the State Government on 06.10.2005 (Annexure 13).

10 It is also relevant to mention here that the Finance Department issued letter dated 08.03.2006 bearing No 1437, that the deputationists had become duly absorbed Government employees. Only if they failed to join within the period of 15 days specified therein, did the Collector have the discretion to return their services to the parent Department. The appointment/absorption of the petitioner is evident from the subsequent Resolution issued by the Finance Department on 24.04.2007 bearing No 2716. The same clearly specifies that the petitioner along with others had been appointed by way of absorption with effect from 08.03.2006 in the Treasuries. The services of the petitioner came to be duly absorbed in the Treasury as an employee of the State Government in the joint cadre of the Collectorate of Muzaffarpur district. Petitioner's retention in the Treasury had been made in public interest after a merit based assessment under a due procedure of absorption and, as such, they had ceased to have any relation with the earlier Boards/Corporations from where they had been earlier deputed.

11 On the basis of some news circulated on television by *Sahara Samachar* alleging that the petitioner had taken bribe for payment of pension, *Muzaffarpur Police Station Case No 278 of 2005* came to be instituted against the petitioner. The District Magistrate, Muzaffarpur asked for an explanation from the petitioner. Petitioner denied the allegations. On basis of said allegations, repatriation order dated 05.01.2006 was issued by the Treasury Officer, Muzaffarpur purporting to repatriate the petitioner to the Corporation. The same was issued after final decision regarding absorption of the petitioner along with all other deputationists on 06.10.2005. The petitioner ceased to be an employee of the Corporation since 06.10.2005. After issuance of the order of absorption dated 06.10.2005, the formalities of absorption were being completed under the letters/decisions dated

08.03.2006 and 24.04.2007. As noticed above, there was also a specific direction that any repatriation of the deputationist including the petitioner could be taken only after directions from the Finance Department. No such direction had been obtained prior to issuance of the repatriation order dated 05.01.2006 which has been challenged in the instant proceedings.

12 The petitioner challenged the decision of the Treasury Officer dated 05.01.2006 by filing the instant writ petition. This Court, under order dated 08.03.2006, passed an interim order restraining the authorities from giving effect to the order of repatriation dated 05.01.2006.

13 During pendency of the writ petition, the petitioner was placed under suspension and an order was issued dismissing the petitioner from service. The suspension order as also his subsequent dismissal dated 26.05.2008 have also been challenged in the instant proceedings. The suspension order dated 06.02.2006, and the order of dismissal dated 26.05.2008 have been issued by the Corporation. Learned counsel for the petitioner has strenuously urged that in view of the interim order dated 08.03.2006 restraining the authorities from giving effect to the repatriation order dated 05.01.2006, the order of suspension as well as the dismissal order dated 26.05.2008 issued by the

Corporation are illegal and contumacious. In view of the interim order dated 08.03.2006, there was no scope for the erstwhile parent Department to initiate any proceeding against the petitioner, let alone dismiss him from service.

14 Since his absorption in Government service, the petitioner came under the disciplinary control of the State Government. The Corporation had ceased to exercise any control over the petitioner, as noticed above. In view of the interim order dated 08.03.2006, the status of the petitioner, as a Government employee, was protected under the orders of this Court also. In such a situation, suspension and dismissal by the erstwhile parent Department was not only illegal but also was affront to the order of this Court dated 08.03.2006 and prima facie appears liable for action under contempt jurisdiction.

15 Validity of the two orders of suspension dated 06.02.2006 and dismissal dated 26.05.2008, which have been issued during pendency of the instant proceedings, are dependent upon the decision whether the petitioner could have been repatriated to his parent Department under the order dated 05.01.2006 bearing Memo No 17 issued under the signature of the Treasury Officer, Muzaffarpur, i e, the order originally impugned in the instant proceedings. It is nobody's case that the interim order dated 08.03.2006 was ever vacated or modified subsequently in the instant proceedings. The subsequent order of dismissal, therefore, in the opinion of this Court is otherwise also not maintainable as being violative of the interim order dated 08.03.2006 passed in the instant proceedings. Only if it is held that the order of the Treasury Officer, Muzaffarpur dated 05.01.2006 repatriating him to the Corporation was just and legal, then only the submissions advanced on behalf of the petitioner regarding the order of suspension and dismissal being without affording any opportunity to the petitioner and without following the due process in violation of principles of natural justice, would have to be looked into. If, on the other hand, this Court finds the order of repatriation dated 05.01.2006 is unsustainable in law, then all subsequent actions of the respondents, including suspension of the petitioner and his dismissal by the erstwhile parent Corporation, being issued by an incompetent authority would consequently fail the test of validity.

16 From the discussion taken note of in the foregoing paragraphs, it is more than obvious that under the various decisions of the State Government in the Finance Department as well as the Directorate of Treasury, the petitioner had been absorbed in the State Government on his post in the Treasury office, Muzaffarpur with effect from 06.10.2005. The absorption of the petitioner had been done at the level of the State Government. It would be relevant to mention here that even prior to his absorption, while the petitioner was working as deputationist, the Finance Department, under communication dated 29.09.2001 (Annexure 18) had clearly directed that services of the deputationist could not be repatriated without obtaining orders from the Finance Department, which, in case of petitioner's repatriation, has not been done. In the circumstance, there is no hesitation for this Court to hold that the order of repatriation dated 05.01.2006 issued by the Treasury Officer, Muzaffarpur without obtaining directions of the Finance Department, as was mandatory under the communication dated 29.09.2001, was clearly not in accordance with law.

17 Learned counsel for the State has urged that the action had been taken under the provisions of the Treasury Code. It is submitted that the order of repatriation was prior to the petitioner's absorption in the Muzaffarpur Collectorate in the Treasury Office. It is also submitted that since the petitioner had not been absorbed in the Government service, the District Magistrate could not have initiated proceedings against the petitioner. It was only the Corporation which was competent to initiate and conduct disciplinary proceedings against the petitioner since the petiioner had not been absorbed in Government service.

18 The said submissions of the learned State Counsel are in fact contradicted by the communications of the State Government itself contained in Annexure 45 of the writ petition as well as Annexure E to the counter affidavit, which has been filed by the respondents, Annexure 45 is a communication issued under the signature of Deputy Secretary to the Government of Bihar in the Finace Department (Treasury Section). The same is dated 03.06.2009 bearing Memo No 4833. It is addressed to the Treasury Officer, Muzaffarpur. From perusal of the same, it is obvious that the Department was of the view that since the petitioner had been absorbed in the State Government service, disciplinary proceedings were required to be conducted by the District Magistrate.

19 Annexure E, which is dated 03.05.2007 and bearing No 1124, has been issued by the Treasury Officer, Muzaffarpur to the Chairman -cum- Managing Director of the Corporation regarding the payment of salary etc to the petitioner by the State Government. Perusal of the same shows that in light of the interim order dated 08.03.2006 issued in the instant proceedings, the petitioner's joining had been accepted in the Collectorate and that he continued to be an employee of the State Government. From these two documents of the authorities of the State Government, it is more than obvious that the petitioner's status as a Government employee subsequent upon his absorption has been duly recognized by the State authorities. The State authorities were also conscious of the fact that pursuant to the State Government decision dated 06.10.2005, the petitioner along with others had been duly absorbed in the State Government and ceased to be an employee of the Corporation. Submissions of the learned State Counsel are, therefore, clearly not tenable.

20 From the communication dated 03.05.2007 issued by the Treasury Officer, Muzaffarpur and 03.06.2009 of the Finance Department (Treasury Section), it is clear that even the respondent authorities considered the petitioner as an employee of the State Government and not of the Corporation. That being so, there was no occasion for the authorities of the Corporation to issue an order of suspension or dismissal of the petitioner as it ceased to have any control over the petitioner in view of his absorption in the State Government.

21 Since the order of repatriation has been issued by the Treasury Officer without obtaining the necessary orders from the

Finance Department and much after the petitioner's absorption in Government service, the same is not sustainable in the eyes of law.

22 Subsequent upon his absorption in the State Government, the master-servant relationship of the petitioner with the Corporation had been severed and, as such, the order of suspension and dismissal issued by the Corporation are also clearly untenable in the eyes of law.

23 The order dated 05.01.2006 bearing Memo No 17 issued by the Treasury Officer, Muzaffarpur is, therefore, quashed. In view of quashing of the order dated 05.01.2006, the order of suspension dated 06.02.2006 and order of dismissal dated 26.05.2008 issued by the Corporation are also not sustainable for the reasons indicated hereinabove.

24 The petitioner continues to be an employee of the State Government in the Treasury Office at Muzaffarpur subsequent upon his absorption in the State Government under the decisions dated 08.03.2006, 03.05.2007 and 06.10.2005.

25 The writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	10.08.2018
Uploading Date	02.11.2018
Transmission Date	NA