

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19029 of 2010

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Ram Anuj Prasad Sinha S/O Sri Ram Autar Prasad Sinha R/O Vill.-
Sosandi, P.S.-Rahui, Distt.-Nalanda.

.... Petitioner/s

Versus

1. The Union of India through Secretary, Deptt. of Personnel, New Delhi.
2. Secretary, Deptt. of Administration, Govt. of India, New Delhi.
3. The State of Bihar
4. Chairman, State Advisory Committee, Patna.
5. State Advisory Committee, Bihar, Patna through Its Chairman.
6. Chief Secretary, Govt. of Bihar, Patna.
7. The Principal Secretary, Home (Special), Govt. of Bihar, Patna.
8. The Principal Secretary, Agriculture Production, Bihar, Patna.
9. The Principal Secretary, General Administration, Govt. of Bihar, Patna.
10. Director, Agriculture Deptt., Bihar, Patna.
11. Joint Director, Agriculture Adoptive Research, Bihar, Patna.
12. The State Of Jharkhand through Chief Secretary, Ranchi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.K.Sinha, Sr. Advocate.
Mr. Anil Kumar, Advocate.

For the State of Jhkd. : Mr. Satyabrat Verma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 14-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:

“That this writ application is directed for quashing and setting aside the notification dated 20.8.2010 so far petitioner is concerned whereby and whereunder the petitioner has been transferred to the State of Jharkhand vide Sl.No.15 under Agriculture Department.”

3. Mr. D.K.Sinha, learned Senior counsel for the petitioner, has submitted that the petitioner's allocation to the State of Jharkhand is bad both on fact and in law and in this regard he has relied on certain documents enclosed with the writ

application to show that the petitioner had given an option for being retained in the State of Bihar.

4. Mr. Sinha, in this regard, has also assailed the impugned order as with regard to the petitioner being allocation State of Jharkhand on the ground that for the post of Statistical Enumerator, only candidate of backward category was to be allocated the State of Jharkhand and since Devendra Prasad belong to the backward category had already been allocated to the State of Jharkhand there could be no occasion also for allocating the petitioner to the State of Jharkhand. In this regard, he has referred to certain seniority position shown in the different gradation list with regard to the petitioner vis-à-vis Devendra Prasad.

5. In this case a counter affidavit has been filed by the Govt. of India wherein it has been clarified that options alone do not matter and in fact it is on the basis of recommendation of the State Advisory Committee that a final allocation order is issued by the Central Government in terms of Section 72(2) of the Bihar Reorganization Act. In this regard it would be relevant to quote paragraphs no.2 to 8 of the counter affidavit, which reads as follows:

“2. Allocation of personnel between the successor States is treated as transfer in public interest. In the guidelines of Central Government dated 13th September, 2000, regarding options, it was clearly stated that employees might be informed that irrespective of their preference, they are liable to be posted to any of the successor States in public interest.

Furthermore, restricting final allocation to options only would have seriously jeopardized the functioning of the new successor States and this would have resulted in severe shortage of manpower in the new successor State of Jharkhand and surplus manpower in Bihar, which was not desirable from the Administrative points of view.

3. The broad principle of allocation inter alia include allocation first by options, followed by Domicile (Home district) and lastly by inclusion of junior most personnel in the reverse order of seniority. If the number of post allocated to the successor State of Jharkhand was more than the total number of optees and domicile (Home District), then people lower down in the seniority position in the cadre were considered for allocation for allocation even against their options, in order to fill up the balance posts.

4. That the State Advisory Committee in terms of the above mentioned guidelines, is required to issue a Tentative Final Allocation List (TFAL), thereafter inviting representations from affected employees and after considering the representation to furnish their recommendations for final allocation to the Central Government.

5. That the final allocation Orders under Section 72(2) of the Bihar Reorganization Act, 2000 are issued by the Central Government based on the recommendation of the State Advisory Committee and the concerned Department of the State Government.

6. That in the case of the allocation of the petitioner, all the above guidelines have been followed by the Central Government while issuing final allocation orders. It is further submitted that the position in the case of final allocation of the petitioner is as follows:-

a) The Recommended Final Allocation List (RFAL) in respect of Shri Ram Anuj Prasad Sinha, Sankhyakiya Sanganak, had been received from the State of Advisory Committee. Accordingly, the Government of India issued final allocation order after taking the approval of the competent authority vide order No.12 mishrit (Jha)/2010 dated 20.8.2010.

The petitioner was allocated to Jharkhand against his option for the State of Bihar and home district on juniority basis in backward category.

b) That it may be stated that option for the successor state once exercised by the State Government employee cannot be reversed in normal circumstances.

7. That the petitioner has raised the issue of allocation of his junior Shri Devendra Prasad to the State of Jharkhand in general category whereas he actually belongs to backward category. A tentative list shows that there are only two employees who belong to backward category whereas the fact is that altogether there are three employees belonging to backward category and as per ratio decided out of 3,2 will remain in the State of Bihar and 1 will go to Jharkhand but same has not been corrected. No one of general category employees has been allocated to Jharkhand.

8. That it is stated in reply to above claim of the petitioner, the office of the State Advisory Committee, Bihar was requested to clarify whether it is the category of reservation

mentioned in the appointment letter or the category of reservation to which the employee belongs to, is the basis of state cadre allocation. The office of the State Advisory Committee, Bihar vide their letter dated 25.7.2012 has informed that allocation of any employee is made on the basis of bio-data in proforma-2 provided by the Administrative Department of the employee. The Committee cannot make any correction in it."

6. From the reading of the aforementioned stand of the respondents, it becomes clear that a conscious application of mind was made with regard to the allocation of State of Jharkhand to the petitioner. As a matter of fact, the basic details were provided by the department to the State Advisory Committee and on the recommendation of the State Advisory Committee, the State Government had issued the final order for allocation of the petitioner to the State of Jharkhand.

7. This Court has also carefully perused such stand of the respondents in the light of the materials on record from which it would appear that there were 20 sanctioned post of the Statistical Enumerator in the erstwhile State of Jharkhand and against them appointed day end i.e. on 15.11.2000 under the Bihar Reorganisation Act, 2000 (hereinafter referred to as 'the Act') only 13 persons were working. Thus, the ration between the State of Bihar and the State of Jharkhand being 2:1, the working 13 Statistical Enumerators were apportioned in the following manner:

Category	Working Strength	State of Bihar	State of Jharkhand
S.T.	2	1	1
Most	4	3	1

Backward Category			
Backward category	2	1	1
General	5	3	2
Total	13	8	5

8. Thus, now when the persons from each of the category were to be selected, while this Court would not be required to go into all these 13 posts separately because of the limited dispute with regard to backward category. It would be found that in the gradation list of the department, as contained in the letter of the Directorate of the Agriculture dated 05.09.2005, only two candidates were shown to have been appointed of the backward category in the erstwhile State of Bihar, namely, Surendra Prasad Singh, whose date of appointment was 22.01.1993 and the petitioner's date of appointment was 25.01.1993. Thus, when the issue arose that one of the candidates, amongst two backward category candidate, namely, Surendra Prasad Singh had to be allocated the State of Jharkhand and the petitioner, namely, Ram Anuj Prasad Sinha, being junior to Surendra Prasad Singh, was selected on the above number of the junior, being given the State of Jharkhand in absence of vacancy in the home State.

9. The plea of the petitioner raised in writ application and also in his various representations that Devendra Prasad ought to figuring on sl. No. 8 of the gradation list being placed



below to both Surendra Prasad and Ram Anuj Prasad Sinha (petitioner) also belong to the backward category stands clarified not only from the final gradation list wherein it has been clearly mentioned that the appointment of Devendra Prasad was made under the general category and, therefore, the fact that he belongs to the backward category by birth could not have been treated as a Statistical Enumerator for the purpose of allocation. It is this aspect of the matter, which had also found favour in the recommendation of the State Advisory Committee which had made itself recommendation for five persons to be sent to State of Jharkhand. As a matter of fact, Rajendra Prasad, being the junior of the two scheduled caste candidates, placed at sl. No. 13 in the gradation list against Rajesh Kumar at sl. No. 12 in the gradation list, he was allocated under the scheduled caste category. Similarly, among the most backward category, Shailesh Chandra Gupta at sl. No. 11 being the junior most in the seniority list of Statistical Enumerator was allocated the State of Jharkhand.

10. As noted above, the petitioner, being the junior of the two of the backward category at sl. No. 7 of the seniority list as against Surendra Prasad Singh at sl. No. 6, was selected for State of Jharkhand whereas Jitendra Bhatt being the senior most to opting for the State of Jharkhand as well as Devendra Prasad being



the resident of Singhbhum district in the State of Jharkhand were the two persons who were allocated to State of Jharkhand in the general category. There should be no confusion that Devendra Prasad, in the allocation list, has been shown to be a candidate of general category and this Court would find the same to be correct because his appointment on the basis of merit in the year 1994 of a candidate of open category though his birth category was backward. In fact, Mr. Devendra Prasad, having not taken the advantage of backward category at the time of his appointment and treated as general category could not have been counted as a candidate of backward category.

11. Once, this aspect becomes clear, there would be no difficulty in approving the allocation of the State of Jharkhand to the petitioner under the provision of Reorganisation Act. The scope of judicial review under Article 226 of the Constitution of India in the matter of allocation of State will be very very limited as has been settled by the Apex Court in the case of *Union of India v. G.R.Prabhalkar & Ors.* reported in *AIR 1973 SC 2102* as well as in the case of *Vasant Krishnarao Paturkar & Anr. v. D.R.Majramkar & Ors.* reported in *(1975) 3 SCC 162* wherein the provision of Section 115 of the State Reorganisation Act akin to Section 72 of the Bihar Reorganisation Act, 2000 and the scope

of judicial review in the matter of integration/allocation of cadre has been explained in the following terms:-

"8. It is well settled that the Central Government under Section 115 of the Act has to determine the principles governing equation of posts and prepare common gradation lists by integration of services and in doing so to ensure fair and equitable treatment to all persons concerned. The Central Government is also required to give opportunities to the parties affected to make their representations. (See **D. Rajiah Raj v. Union of India** reported in (1973) 1 SCC 61; **N.Subba Rao v. Union of India** reported in (1972) 2 SCC 862 and **Union of India v. P.K.Roy** reported in (1968) 2 SCR 186).

9. The High Court cannot clothe upon itself the authority for performing the functions which are specifically and expressly intended to be the obligation and duty of the Central Government under the Act. The High Court is, therefore, not right in two matters, namely, in directing the State Government to do that which under the provisions of the Act is within the domain of the Central Government and secondly in fixing a time limit for action and, if the same is exceeded, directing an automatic entitlement to the second relief as to equation, absorption and fixation of seniority as prayed for by respondents 1 to 19. This view of the High Court is clearly erroneous in view of the provisions of the Act."

12. Yet again the same principles were reiterated by the Apex Court in the case of **State of Maharashtra & Anr. v. Chandrakant Anant Kulkarni & Ors.** reported in **AIR 1981 SC 1990** wherein dealing with the similar situations arising out of Section 115 of the State Reorganisation Act, which is para materia of Section 72 of the Bihar Reorganisationn Act, 2008. The law laid down in the following terms:

"11. There is a long line of decisions of this Court starting from the **Union of India v. P.K.Roy**, (1968) 2 SCR 186 (AIR 1968 SC 850) laying down that the Central Government has been constituted to be the final authority in the matter of integration of services under sub-section (5) of S. 115 of the Act. The matter of equation of posts is purely an administrative function. It has been left entirely to the Central Government as to how it has to deal with

these questions. The Central Government had established an Advisory Committee for the purpose of assisting in proper consideration of the representations made to it. There is nothing in Ss. 115 to 117 of the Act prohibiting the Central Government in any way from taking the aid and assistance of the State Govt. in the matter of effecting the integration of services. As observed by this Court in Roy's case the usual procedure followed by the Central Government in the matter of integration of services generally, is in order. It is not open to the Court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps, the only question the Court can enquire into is whether the four principles agreed upon at the Chief Secretaries Conference has been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate. But where, as here, in the matter of equation of posts, the Central Government had properly taken into account all the four principles decided upon at the Chief Secretaries Conference, the decision cannot be assailed at all. In the present case, not only the Central Government had laid down the principles for integration, but also considered the representations and passed the final orders and the provisional gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government."

13. As noted above, in the present case, the allocation of the employees of the cadre of Statistical Enumerator has been done on the settled norms of the Central Government and that too after going through the process of seeking option from all the incumbents as also considering the entire facts through the State Advisory Committee. Once, this exercise has been completed and this Court does not find any error therein, it would be absolutely loath to set aside the impugned order whereby not only the petitioner but a large number of employees of many departments including 15 of the Agriculture Department have been allocated to the State of Jharkhand by the Central Government in exercise of

its power under Section 72(2) of the Bihar Reorganisation Act.

14. The last submission of Mr. Devendra Kumar Sinha, learned Senior Counsel appearing on behalf of the petitioner, that the petitioner is now aged about 55 years and has been left with hardly five years of service or that his mother is seriously ill, can only be a matter of compassion. The petitioner on such ground could have only moved the Central Government which has been vested with the ultimate power of allocation of State in terms of the Bihar Reorganisation Act, 2000.

15. That being so, this writ application fails and is accordingly, dismissed.

16. As a result whereof, the interim order of status quo passed by this Court on 24.11.2010 also stands vacated and the Director, Agriculture, who, vide his letter no. 3679 dated 08.12.2010, had allowed the petitioner to continue at Nawada, must pass the consequential order relieving the petitioner at once to join in the State of Jharkhand.

17. Let a copy of this order be sent to Director, Agriculture for its compliance in letter and spirit.

(Mihir Kumar Jha, J)

Sujit/-

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