

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20968 of 2011

1. Ashok Kumar Ranjan S/O Sri Munshi Ram Resident Of Village- Rajaram Narahwa, P.O-Narahwa Shukla, Police Station- Gopalpur, District- Gopalganj, Presently At Near Shri Ramkutir, South Of Anishabad Telephone Exchange, P.O- Anishabad, P.S- Gardanibagh, District- Patna, Presently Posted As An Executive Engineer (Mech.), Mechanical Division, Road Construction Department, Ara, P.O- Main Office Ara, P.S- Nawada Ara, District- Ara.

.... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Road Construction Department, Vishweshraiya Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Home (Special) Department, Old Secretariat, Patna.
3. The Principal Secretary, General Administrative Department, Govt. Of Bihar, Old Secretariat, Patna
4. The Special Secretary, Road Construction Department, Govt. Of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
5. The Deputy Secretary (Management Cell), Road Construction Department, Govt. Of Bihar, Vishweshraiya Bhawan, Bailey Road, Patna.
6. Anil Kumar S/O Sri Birendra Kumar Resident Of Flate No.204, Mahendra Apartment, North Colony, Police Station- Patliputra, District- Patna Presently Posted As Technical Advisor, (Executive Engineer (Mech.) To Superintending Engineer (Mech.) Mechanical Circle, Road Construction Department, Darbhanga. (Bihar)

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 17152 of 2008

1. Lal Jha son of Late anant Narayan Jha, resident of Village- Lalapalti, P.S. Ghanshyampur, District Darbhanga, at present Rehabilitation Officer, Sitamarhi
2. Vishnu Kant Pathak son Sri Ram Chandra Pathak R/o Vill + PO Bathanaha, PS Bathanaha, Dist.- Sitamarhi, Posted as Design Division no.1, Water Resources Department, Dihari, District Rohtas
3. Rajendra Kumar Singh, son of Late Ram Paras Singh, resident of village Balmi Nanhkar, PS Kalyanpur, East Champaran, at present Asstt. Engineer, Design Division Purnea
4. Ram Binod Singh S/o Late Tez Nr. Singh, resident of Village- Pachataki Ram, PS Bairagania, District Sitamarhi, at present Asstt. Engineer, Drainage Investiation Circle, Muzaffarpur
5. Umesh Prasad Singh, son of Sri Baldeo Singh, resident of Village- Naudiha, PO + PS Khaira, District Jamui, at present Asstt. Engineer, Water Wage Division, Sheikhpura
6. Lalit Kishore Jha, son of Shri Shiva Narayan Jha, resident of Village- Yajwar, PS Katra, District Muzaffarpur, at present Rehabilitation Officer, Supaul, Water Resources Department
7. Parmanand Jha Pawan s/o Late Pulkit Jha, Resident of Village- Bath, Post- Adharpur, PS Ghanshyampur, District Darbhanga at present posted as Assistant Engineer, Rural Works Division 2, Patna

8. Manoj Raman (only effected with letter of home), son of Late Chandeshwar Pd. Singh, resident of Village- Bishnupur, PS Shambhuganj, District Banka, at present Estimating Officer, Tirhut Canal Circle, Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar, Patna
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Department of Home (Special), Government of Bihar, Patna
4. The Deputy Secretary, Department of Home (Special), Government of Bihar, Patna
5. The Principal Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, Patna
6. The Deputy Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, Patna
7. The Principal Secretary, Department of Water Resources, Government of Bihar, Patna
8. The Joint Secretary, Department of Water Resources, Government of Bihar, Patna
9. The Under Secretary, Water Resources Department, Government of Jharkhand, Ranchi

.... Respondent/s

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Appearance :

(In CWJC No. 20968 of 2011)

For the Petitioner/s : Mr. Sanjay Singh
Mr Brisketu Sharan Pandey
For the State : Mr. Rajiv Roy, GP 5
Mr Suresh Kumar, AC to GP
For Respondent No.6 : Mr Rajendra Narain, Sr. Advocate
Mr Deepak Kumar Sinha

(In CWJC No. 17152 of 2008)

For the Petitioner/s : Mr. Ranjan Kumar Jha
Mr. Choudhary Prem Kr.Thakur
For the State of Bihar : Mr. Hari Shankar Roy, AC to PAAG
For the State of Jharkhand: Mr Nishi Nath Ojha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 17-09-2015

A bunch of writ applications came to be filed by a set of employees, who came to be affected by one way or the other by mutual cadre transfer between the State of Bihar and the State of Jharkhand or vice versa. The reason for filing of some writ



applications by a set of such employees are because they were being made to lose their seniority because they opted for a mutual transfer worked out by them. There are other writ applications wherein persons after mutual transfer were supposed to lose their seniority and placed at the bottom of ladder of the gradation list but they are insistent upon claiming original seniority and the position as it stood before the mutual transfer request was accepted and acted upon by the two States.

2. The Court puts it for record that State of Bihar was bifurcated and State of Jharkhand was created on 15th of November, 2000. The Central Government enacted a legislation known as the Bihar Reorganization Act 2000 and this Act was supposed to take care of various aspects arising out of bifurcation of the State of Bihar. So far as the cadre strength of the two States is concerned, it was decided that 2/3rd of the strength of the undivided Bihar will remain in the State of Bihar and 1/3rd of the strength of the employees will go to the State of Jharkhand.

3. After the bifurcation, decisions were taken by the competent authority and allocation of cadre was made. The Court will not go into the modality, which was worked out for allocation of such cadres. When the exercise of allocation of cadre started, problems faced by diverse kind of employees surfaced.



Representations of all kinds started pouring in. It is obvious that such large scale change of cadres will have elements, which affected human beings in one way or the other. Deliberations were done and the Central Government came to a considered opinion that certain cadre transfers could also be done or entertained on the basis of mutual transfer worked out by employees amongst themselves. Some of the early circulars laid down the basics of requirements, which were required to be fulfilled before such request for mutual transfer could be entertained. It is made clear that some of the notifications which form part and parcel of the pleadings of the two writ applications are not stand alone circulars and decisions since deliberations was an ongoing process. Clarifications came to be issued from time to time depending upon the kind of problems, which were thrown up in implementation and enforcement of request for mutual transfers and cadre transfer. But we are concerned with mutual transfer cases only.

4. There is no dispute that when the initial policy of mutual transfer came into place, quite a few employees opted for it. There is again no dispute that when these options were exercised, there was no clarity on the position as to what their seniority position would be, if the request for change of cadres between two States were accepted and implemented. The mutual transfer policy

remained in vogue. Employees availed the benefits but clash of interest with regard to seniority started soon thereafter. One set of persons insisted that they will not lose their position of seniority. They also pleaded that the same benefit and protection, which other employees had been extended on cadre transfer without their consent or without any option exercised for mutual transfer, be made applicable across the board.

5. Litigations started in the State of Bihar as well as in the State of Jharkhand. This Court has the benefit now of a decision rendered by a Division Bench of Jharkhand High Court in an appeal filed by State of Bihar against a learned Single Judge's decision, which was the case of *Rajendra Pratap Sinha v. State of Jharkhand and others*. The Division Bench decision has been brought on record by the petitioner of CWJC No.20968 of 2011 as Annexure – 1 in IA No.4100 of 2015.

6. The Division Bench after hearing the parties to the dispute opined that the rational and reasoning including the judgment rendered by the learned Single Judge in the case of *Rajendra Pratap Sinha v. State of Bihar, reported in 2009 (2) JLJR 750*, was erroneous and required to be interfered and set aside. Appeal of the State of Bihar was allowed. The Court is tempted to reproduce herein below some of the significant findings given by the Division Bench.

“18. The learned Senior Counsel has submitted that since the letter dated 21.05.2005 did not postulate any

condition of loss of seniority, therefore, by order dated 05.12.2007 the respondent no.1 could not have been subjected to such a condition. A perusal of letter dated 21.5.2005 makes it clear that it was a communication to the Chief Secretary, Government of Jharkhand for sending the proposals for review of cadre allocation only of those employees who fulfilled the above mentioned 6 conditions. The conditions mentioned in letter dated 21.05.2005 are the eligibility conditions for consideration of the cases for mutual transfer and letter dated 21.05.2005 does not prescribe the terms and conditions for transfer. The contention raised on behalf of the respondent no.1 that, in the absence of any condition relating to loss of seniority prescribed in letter dated 21.05.2005, by the transfer order dated 05.12.2007 the respondent no.1 could not have been subjected to such a condition whereunder he would lose his original seniority, is thus liable to be rejected. (emphasis mine)

19. In “Rajendra Pratap Sinha” (supra), a prayer was made for restraining the State- respondents from downgrading the employee in the seniority list as stipulated in the transfer order and the learned Single Judge of this Court taking note of the provision under Section 73 of Bihar Reorganisation Act observed that since the conditions of service of the government servants whose services are allotted to the successor States shall not be changed, therefore, a provisional gradation list was published in which it was mentioned that the seniority of government servants who are allotted the Jharkhand cadre shall not be affected. However, since the seniority of the said Rajendra Pratap Sinha was sought to be altered, in view of the

said facts the learned Single Judge held that in the said case the writ petitioner's case was not one of transfer from one cadre to another, rather it was a case of allotment of his services to the successor State of Jharkhand on the basis of a scheme for mutual exchange of services. It was finally held that the provisions of Section 73 of the Bihar Reorganisation Act does not permit any change in the service conditions to the disadvantage to the government servants whose services have been allotted to any one of the successor States.

20. *As noticed above, in the present case the writ petition was filed only for a direction to the respondent-State of Jharkhand "to consider and take a decision" on the representation dated 16.01.2008 submitted by the respondent no.1 herein. Thus, the relief sought in the case of "Rajendra Pratap Sinha" (supra) was entirely different from the prayer made by the respondent no.1 in the present case. Moreover, from a perusal of Section 73 of the Bihar Reorganisation Act, 2000 it is apparent that the protection of proviso to Section 73 of the Bihar Reorganisation Act is available to an employee only during the process of final allocation of his service from one State to the other. (emphasis mine) Admittedly, by virtue of final cadre allocation order dated 13.09.2006 issued under Section 72 of the Bihar Reorganisation Act, the services of the respondent no.1 stood finally allocated to the State of Bihar. Section 72 and 73 of the Bihar Reorganisation Act, 2000 read as follows:*

"72. Provisions relating to services in Bihar and Jharkhand- (l) Every person, who immediately before the appointed day is serving in connection with the

affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) *As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub- section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.*

(3) *Every person, who is finally allotted under the provisions of sub- section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.*

73. Other provisions relating to services. – (1) *Nothing in Section 72 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:*

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand under Section 72 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) *All services prior to the appointed day rendered by a person-*

(a) if he is deemed to have been allocated to any State under Section 72, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of Jharkhand shall be deemed to have been rendered in connection with the affairs of the Union,

for the purposes of the rules regulating his conditions of service.

(3) The provisions of Section 72, shall not apply in relating to members of any All India Service.”

21. *It would thus appear that the protection of proviso to Section 73 of the Bihar Reorganisation Act would have been available to the respondent no.1 only in the event he would have joined service under the Government of Bihar in compliance of cadre allocation order dated 13.09.2006 and in that event his service conditions could not have been altered, in any manner to his detriment. However, pursuant to letter dated 15.09.2004 of the Government of India, the order reviewing the cadre allocation on an application for mutual transfer on certain terms and conditions agreed upon by the respective States and implemented by the Nodal Department, was altogether a different transaction and the protection under proviso to Section 73 of the Bihar Reorganisation Act is not available to the employees who sought mutual transfer and whose requests have been accepted subject to condition that they would not claim seniority as per the final gradation list.* (emphasis mine) *The condition stipulating loss of seniority in order dated 05.12.2007 whereby the respondent no.1 was re-allocated cadre in the State of Jharkhand cannot be said to be hit by provision under section 73 of the Bihar Reorganisation Act. The condition stipulated in order dated 05.12.2007 is binding on the respondent no.1 and the learned Single Judge clearly fell in error in holding that the respondent no.1 would be entitled for his seniority as per the final gradation list, even though such a prayer*

was not made in the writ petition.

22. *The decision of the Nodal Agency that is, Home (Special) Department is binding on both the States and in fact the State of Jharkhand has filed counter affidavit stating that the conditions imposed by order dated 05.12.2007 cannot be changed unilaterally by the Road Construction Department, Government of Jharkhand. The appellant has also taken a plea that the State Reorganisation High Level Committee in its meeting dated 27.06.2007 felt that if the condition in the cadre re-allocation orders stipulating loss of seniority are relaxed, it would adversely affect the morale of those employees who obeyed the order of the Government of India and joined their allocated successor States and it was decided that the employees seeking cadre re-allocation should be subjected to the condition that they would not claim seniority as per the final gradation list. It is submitted by the counsel appearing for the appellant that in view of order passed in “Rajendra Pratap Sinha” (supra), the Patna High Court has also granted interim protection to several employees and therefore, the issue involved in the present case required to be decided by this Court. For the aforesaid reasons, we find no substance in the contention that since the State of Jharkhand has chosen to implement the order passed by this Court in “Rajendra Pratap Sinha” (supra), no interference is required in the present case. The State of Jharkhand after communicating its consent vide letter dated 21.12.2006 could not have chosen to implement the judgment in “Rajendra Pratap Sinha” (supra) as it would amount to withdrawing its consent unilaterally.*

We further find that in “Rajendra Pratap Sinha” (supra), the appellant herein was not made a party and thus, the decision in the said case was rendered in the absence of the appellant herein, and therefore, the writ petition preferred by respondent no.1 herein could not have been allowed following the judgment in “Rajendra Pratap Sinha” (supra). Since we have held that the protection under Section 73 of the Bihar Reorganisation Act, 2000 is not available to the employees seeking mutual transfer, we do not accept the plea of respondent no.1 that till the final decision in Review Petition No.112 of 2009, the hearing of the present Letters Patent Appeal be adjourned.

23. In the result, we hold that the condition stipulated in order dated 05.12.2007 is binding on the respondent no.1 and other employees and the protection under proviso to Section 73 of the Bihar Reorganisation Act is not available to the employees seeking mutual transfer. The impugned order dated 01.07.2009 passed by the learned Single Judge suffers from serious infirmities and accordingly, we set-aside the impugned order dated 01.07.2009. Consequently, the Letters Patent Appeal stands allowed. (emphasis mine)

7. The reason why this Court has extensively quoted from the decision of the Division Bench is that the counsel representing the private respondent no.6 in CWJC No.20968 of 2011 and the counsel for the petitioners of CWJC No.17152 of 2008 tried to urge and argue the same points, which have been taken note of by



the Division Bench and answered against them. Since this Court did not want to waste judicial time on taking note of all those arguments again and meeting them independently since it has the benefit of the opinion of the Division Bench, on the issues vexing the parties to the dispute, in the two writ applications. The answer lies in the paragraphs quoted above. Some of those salient features of the Division Bench have also been highlighted by this Court by underlining them so as to highlight the answers to the questions raised by either the private respondent or counsel representing the petitioners of Lal Jha's case.

8. The law stands settled. The quoted paragraphs of the order of the Division Bench passed in LPA No.511 of 2009, dated 22.4.2014 leaves no ambiguity that all those employees, who have opted for mutual transfer, will have to lose their seniority. They have no protection either of the proviso of Section 73 or any other provision of law. There cannot be any distinction between an employee, who had filed an application for mutual transfer before any date or thereafter. A person, who had opted for mutual transfer, will have to be treated as one class and there cannot be a sub class of employees, who may have opted for a transfer prior to 2006 or after 2006.

9. In addition to that, the Court also makes it clear that

the answer with regard to the mutual transfer and the position of such employees exercising option of mutual transfer will be finally governed not only by the Division Bench decision of the Jharkhand High Court but the final position, which has been also indicated in the circular dated 3.2.2009 contained in Annexure- 4 to the writ application of Ashok Kumar Ranjan's case (CWJC No.20968 of 2011).

10. The Court has deliberately not delved into or dealt with independent cases since this Court was required to decide the matter on the broad policy framework and the law governing such right and interest. The Court directs the State of Bihar, especially the concerned departments that they will have to now carry out an exercise and come out with the final seniority list of all such employees, strictly within the parameters of what has been decided today as well as by the Division Bench of Jharkhand High Court. If any individual has any grievance after the exercise, he or she surely has legal remedy available.

Writ applications stand disposed of in terms of the above adjudication.

(Ajay Kumar Tripathi, J)

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