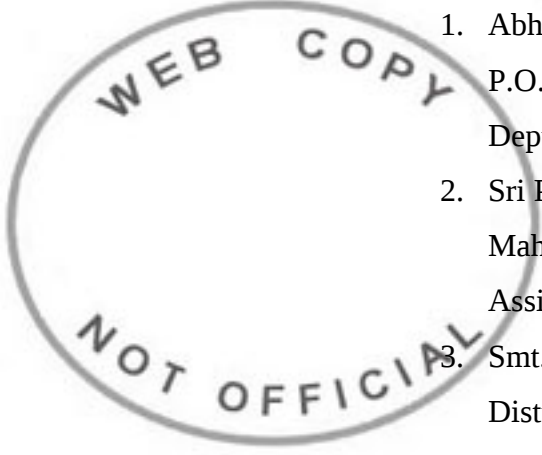


IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20259 of 2010

- =====
1. Abhiram Manjhi S/O Late Kunju Ram Manjhi R/O Vill.-Kusum Tikra, P.O.-Kuchu, P.S.-Silli, Distt.Ranchi (Jharkhand) At Present Assistant, Deptt. Of Panchayati Raj, Govt. Of Bihar, Patna.
 2. Sri Punabeer Lakra S/O Late Mangal Das Lakra R/O Vill.-Chalho, P.O.-Mahuari, P.S.-Kaio, Distt.-Lohardagga, (Jharkhand), At Present Assistant, Deptt., Of Panchayati, Govt. Of Bihar, Patna.
 3. Smt. Jyotin Toppo W/O Sri S.Karketta R/O Vill.-Garai, P.O.-Kamdara, Distt.-Gumla (Jharkhand), At Present Assistant, Deptt., Of Energy, Govt. Of Bihar, Patna.
 4. Smt. Matilda Bara W/O Nirmal Kachchap R/O Vill.-Anandpuri Sadar Block, P.S.-Hazaribagh, Distt.-Hazaribagh, Jharkhand, At Present Assistant, Directorate Of Exonomy And Statestics, (Planning And Development Deptt., Govt. Of Bihar, Patna).
 5. Smt. Agnesh Balmuchu D/O Late Patrash Balmuchu R/O M/H-Khuti, P.O.+P.S.-Khuti, Distt.-Khuti, (Jharkhand), At Present Assistant Deptt., Of Energy, Govt. Of Bihar, Patna.
 6. Sri Sahebram Singh Munda S/O Late Shyam Singh Munda R/O Vill.-Bandaweer, P.O.-Eiyadih, P.S.-Eiyagarh, Distt.-Ksaraikala Kharsath, Jharkhand, At Present Assistant Deptt., Of Animal And Fisheries Resources, Govt. Of Bihar, Patna.
 7. Rajeev Ranjan Singh S/O Sri Surendra Kr. Singh Vill.-Eitha, P.O.-Basaura, P.S.-Lasliganj, Distt.-Lasliganj (Jharkhand), At Present Assistant, Deptt., of Election, Govt. Of Bihar, Patna.
 8. Bimla Karkatta S/O Israel Karkatta R/O Vill.-Dadgo, P.S.-Lapoong, P.O.-Kakaria, Distt.-Ranchi (Jharkhand), At Present Assistant, Deptt., Of Welfare, Govt. Of Bihar, Patna.
 9. Sudhir Minj S/O Late Sudarshan Ming R/O Vill.-Sewai Khoot Toli, P.O.-Sewai, P.S.-Simdega, Distt.-Simdega, (Jharkhand), At Present Assistant, Deptt., Disaster Managment, Govt. Of Bihar, Patna.
 10. Churka Hansada S/O Late Chholu Hansada R/O Vill.-Kend Polai, P.O.-Bagnal, P.S.-Dumka Mufassil, Distt.-Dumka (Jharkhand), At Present Assistant, Office Of The Chief Engineer, Pited, Region-Bhagalpur (Patna).



.... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry Of Personnel, Public Grievance And Pension Personnel & Training Deptt. Govt. Of India, New Delhi.
2. The Deputy Secretary, Ministry Of Personnel, Public Grievance and Pension (Deptt. Of Personnel and Training), Govt. Of India, New Delhi.
3. The State Of Bihar through the Chief Secretary, Govt. Of Bihar, Patna.
4. The State Of Jharkhand through the Chief Secretary, Govt. Of Jharkhand, Ranchi (Jharkhand).
5. The Principal Secretary, Deptt., Of Personnel And Administrative Reforms (Now General Administration Deptt.,) Govt. Of Bihar, Patna.
6. The Secretary, Personnel, Administrative Reforms and Rajbhasha Deptt., Govt. Of Jharkhand, Ranchi, Jharkhand.
7. The Secretary, Home (Special) Deptt. Govt. Of Bihar, Patna.
8. Deputy Secretary Personal Administrative Reforms Deptt. Bihar, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Kumar Singh, Advocate.

For the Respondent/s : Mr. Alok Kumar Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 14-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioners in this writ application reads as follows:

"1.(i) For issuance of appropriate writs or orders or directions for the quashing of the Memo no. 4020 dated 21.11.07 issued by the Deptt. of Personnel and Administrative Reforms, Government of Bihar, Patna whereby and whereunder the representation of some of the petitioners for Transfer/allocation of the State of Jharkhand have been rejected.

(ii) For a direction, commanding upon the concerned respondents to allocate/transfer the service of the petitioners as Assistant from Govt. of Bihar, Patna to Govt. of Jharkhand, Ranchi in as much as the petitioners have been appointed as Assistant pursuant to Adv. No. 135(A)/96

published for United or erstwhile State of Bihar for appointment of Assistant in the Secretariat cadre through limited competitive Examination or,

(iii) For a direction to the State of Bihar to send the services of the petitioners to the State of Jharkhand as Assistant and as well as a direction to the State of Jharkhand to accept the services of the petitioners as Assistant with all the consequential benefits.

(iv) If the reliefs no. (1),(ii) and (iii) above is not granted to the petitioners, this Hon'ble Court may further please to direct the State of Bihar to provide the benefits of reservation to the petitioners for all practical purposes including promotions to higher post in as much as the petitioners belong to schedule Tribes Category (St) being permanent residents of the State of Jharkhand."

3. Learned counsel for the petitioners has submitted that though the petitioners were appointed on the post of Assistant in the State of Bihar on 30.05.2007 but as they belong to the State of Jharkhand, they should be allocated to the State of Jharkhand in terms of Section 72 of the Bihar Re-organisation Act, 2000 (hereinafter referred to as "the Act") and to that extent the order rejecting the representations for being allocated State of Jharkhand dated 21.11.2007 as contained in Annexure-1 should be quashed.

4. Learned counsel for the petitioners, in support of the aforementioned prayer, had submitted that the petitioners being the resident of different districts of the State of Jharkhand, would be better placed in the service career if they could be allocated State of Jharkhand specially when the reservation available to them in the State of Jharkhand would enhance their future prospect and promotion in the cadre of Assistant.

5. Per contra, learned counsel for the State of Bihar and

the State of Jharkhand, having filed their counter affidavits, have opposed such prayer of the petitioners on the ground that allocation of cadre in terms of Section 72 is meant only for the employees who were working in the erstwhile State of Bihar on the appointed day on 15.11.2000 as per the Act.

6. In this regard, learned counsel for the State of Bihar has relied on the stand taken by the respondent no. 7 in para-6 of the counter affidavit which reads as follows:-

"6. That it is humbly stated and submitted here that the petitioner were appointed on the post of Assistant, in compliance of the order dated 17-08-2006 passed in C.W.J.C. No. 8741/2003 by the Hon'ble Patna High Court, vide order No. 1899, dated 30.05.06 after the bifurcation of the State against the post allocated to the successor State of Bihar on the basis of ratio fixed for division of cadre. It is pertinent to mention here that the cadre division of the employee was done on the basis of working strength of the united Bihar on 15-12-2000 under the provision of the Bihar Reorganization Act 2000. Since the petitioner were appointed after bifurcation of the State against the post available with the successor State of Bihar hence they are not governed by the provisions of the Bihar Reorganization Act 2000 and there services are not allocable. Section 72 of the Bihar Reorganization Act 2000 is applicable only to those persons who were in service on the particular post on 15-11-2000 in united Bihar for their cadre allocation."

7. Similar stand has been taken even by the State of Jharkhand in its counter affidavit as has been sought to be referred to and relied by the learned counsel for the State of Jharkhand wherein it has been stated as follows:-

"6. That it is stated that from the own showing of the petitioners in paragraph no. 12 of the writ petition, it would be clear that the petitioners have been appointed as Assistants in the State of Bihar vide an order dated 30.05.2007 (Annexure-4 to the writ petition), that is, much after the reorganization of existing State of Bihar and creation of successor State of Jharkhand on and from

15.11.2000.

7. That as per Section 72 of the Bihar Reorganization Act 2000, 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 Central Government to serve provisionally in connection with the State of Jharkhand.

8. That thus from the aforementioned provisions it is manifest and clear that cadre allocation under Section 72 of the Bihar Reorganization Act 2000 can be done only with regard to those personnels who were working as on the appointed day (15.11.2000) under the existing State of Bihar. It is asserted that since the petitioners were not even born in the cadre on the appointed day as they have been admittedly appointed in the year 2007, therefore, the cases of the petitioners are not covered under Section 72 of the Bihar Reorganization Act 2000 and they can not derive any benefit out of that.

9. That it is relevant to mention here that in terms of Section 75 of the Bihar Reorganization Act 2000, a State Advisory Committee was constituted by the Government of India for the purpose of making recommendations with regard to cadre allocation of the employees under Section 72 of the said Act. It is further pertinent to mention here that in terms of paragraph V(2) of D.O. No. 28/1/2000-SR(S) dated 21.12.2000 issued by the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi, the successor State of Bihar was made responsible for furnishing details of sanctioned posts category wise, cadre wise, grade wise and department/directorate wise to the State Advisory Committee to enable them to finalise distribution of posts between the two successors States.

10. That thus from the aforementioned facts it is manifest and clear that the petitioners are not covered under the provisions of Section 72 of the Bihar Reorganization Act 2000 and therefore, their cadre cannot be allocated."

8. In the considered opinion of this Court, the stand taken by the respondents has to be upheld for more than one reason. First of all, under the provisions of Bihar Reorganization Act, 2000, allocation of State in terms of Section 72 has to be made only in respect of such of the employees of the erstwhile State of Bihar who were working on 15.11.2000. This would become more clear from reading of Section 72 of the Act which

reads as follows:

Sec. 72. Provisions relating to services in Bihar and Jharkhand.- (i) 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 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 the 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."

9. Admittedly, the petitioners' entering in service on the post of Assistant much after 15.11.2000 and their appointment in fact has been made exclusively for the truncated State of Bihar which came into being after 15.11.2000. In that view of the matter, their allocation of State of Jharkhand is wholly impermissible on facts and in law.

10. The reliance placed by the learned counsel for the petitioners on some advertisement issued by the State of Bihar either without consent of the State of Jharkhand for allocation of service being only an executive decision, the same cannot supplant the statutory provisions made under Section 72 of the Act. The

plea of availability of reservation in the State of Jharkhand and enhancing the future prospect of the petitioners can also not be a ground for allocation of State of Jharkhand. The reservation given in the State of Jharkhand and enhancing chances of promotion also cannot lead to violation of the provisions of Section 72 of the Act inasmuch as chances of promotion cannot be said to be the condition of service.

11. As a matter of fact, allocation of any Government servant of the State of Bihar who has been appointed after 15.11.2000 to the State of Jharkhand will be wholly impermissible in teeth of the provisions of the Bihar Reorganization Act, 2000.

12. Thus, for the reasons indicated above, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Sujit/-

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