

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.328 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 25181 of 2013**

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Nirupama Shankar, Wife of Shri Bhujang Bhushan, Resident of-C-2C Jay Shree Apartment, Ramdeo Vihar, Opposite Ashok Naga, Road No.4, P.O. & P.S.-Argora, District-Ranchi at present working at the Child Development Project Officer (on deputation from Bihar), Chaibasa Sadar, West Singhbhum (Jharkhand).

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Deputy Secretary, Social Welfare Department, Government of Bihar, Patna.
4. The Principal Secretary, Home Department, Government of Bihar, Patna.
5. The State of Jharkhand through the Chief Secretary.
6. The Principal Secretary, Social Welfare, Women and Child Development Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S.-Dhurwa, District-Ranchi.
7. The Deputy Secretary, Social Welfare, Women and Child Development Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S.-Dhurwa, District-Ranchi.
8. The Principal Secretary, Home Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S.-Dhurwa, District-Ranchi.
9. The Deputy Secretary, Home Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S.-Dhurwa, District-Ranchi.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y V Giri, Sr. Advocate
Mr. Nikhil Kumar Agrawal, Advocate
For the State of Bihar: Mr. Gyan Shankar, Advocate
For the State of Jharkhand: Mr. Dhruva Mukherjee, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 05-05-2016

I.A.No. 1541 of 2015

This interlocutory application has been filed for
condonation of the delay of 43 days in preferring the present Letters

Patent Appeal.

In view of the reasons assigned in this application and the submission made in support thereof, the delay is condoned.

I.A. No. 1541 of 2015 stands disposed of.

L.P.A.No. 328 of 2015

The order dated 17th November, 2014 passed by the learned Single Bench in CWJC No. 25181 of 2013 is the subject matter of challenge in the present Letters Patent Appeal. The challenge in the writ petition is to an order dated 20th January, 2014, whereby the request of the appellant for transferring her service to the State of Jharkhand was declined on the ground that she was appointed in the State of Bihar after its bifurcation with effect from 15.11.2000.

Learned counsel for the appellant has vehemently argued that claim of the appellant is for mutual transfer whereas such claim has not been considered by the respondent while declining her request.

We do not find any merit in the said argument. The representation of the appellant for her transfer is Annexure 17 dated 28th November, 2013. The appellant has claimed transfer to the State of Jharkhand on the following grounds:-

- (a) That a merit list of the candidates was published



by Bihar Public Service Commission on 29th June, 1999 and was sent to the Department of Social Welfare, but the concerned Department appointed only 255 candidates as against 287. She had approached the High Court and therefore in terms of the decision of the High Court in May, 2002 she had joined on 21st May, 2002 at Bhabhua. The appellant pointed out that if all the candidates would have been permitted to join at the same time, she would have satisfied the conditions of the change of cadre.

(b) That her in-laws are in Deoghar and that she had approached the High Court in 2004 for allocation to the State of Jharkhand on mutual basis. But even after the orders of the Court for consideration of her representation, the department has not considered it.

(c) That her husband is working in a Private Sector undertaking in Ranchi and her daughter is studying in XIth class. Therefore, she has been requesting for transfer to Jharkhand and accepting her request she has been sent on deputation since 1.10.2010 for five years.

(d) That the Jharkhand Government is considering her request for mutual transfer and sent a letter to the

Social Welfare Department, Govt. of Bihar on 31.12.2012 for issuance of No-objection. Since no action has been taken after lapse of eleven months, she has sent reminder to the authorities of Jharkhand on 02.11.2013.

Learned counsel for the appellant has referred to various communications in respect of consideration of her claim for transfer to the State of Jharkhand, but there is no decision by the State of Jharkhand to take the appellant to the State of Jharkhand on mutual transfer basis. There is no decision of the State of Bihar to allow the mutual transfer as well. In the absence of decision to transfer on mutual consent of the other official, the claim of the appellant for mutual transfer cannot be considered. It may be stated that none of the other employees who may be interested in seeking mutual transfer or have consented for transfer have been impleaded as party in the present proceedings. No order can be passed in their absence.

Therefore, the only request of the appellant for transfer is either based on compassionate grounds or on mutual basis or on cadre division. In respect of cadre division, the appellant cannot claim allocation to State of Jharkhand as she was appointed after the cut-off date. No case for mutual transfer has been accepted or rejected. Compassion may not be a ground for transfer to another

State.

We do not find any error in the order of the learned Single Judge warranting any interference by this Court in the present Letters Patent Appeal.

The appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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