

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2241 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 19029 of 2010**

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Ram Anuj Prasad Sinha Son of Sri Ram Autar Prasad Sinha, resident of village
Sosandi, P.S.- Rahui, District- Nalanda.

.... Appellant/s

Versus

1. The Union of India, through Secretary, Department of Personnel, New Delhi
2. The Secretary, Department of Administration, Government of India, New Delhi
3. The State of Bihar
4. The Chairman, State Advisory Committee, Patna
5. The State Advisory Committee, Bihar, Patna through its Chairman
6. The Chief Secretary, Government of Bihar, Patna
7. The Principal Secretary, Home (Special), Government of Bihar, Patna
8. The Principal Secretary, Agriculture Production, Bihar, Patna
9. The Principal Secretary, General Administration, Government of Bihar, Patna
10. The Director, Agriculture Department, Bihar, Patna
11. The 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 Appellant/s : Mr. Khursid Alam, Advocate
Mr. Sudhir Kumar, Advocate
For the Union of India : Mr. Ram Anurag Singh, C.G.C.
For the State : Mr. R.B.N. Singh, AC to GP-9.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

C.A.V. JUDGMENT

(Per: HONOURABLE Mr. JUSTICE AHSANUDDIN AMANULLAH)
Date: 10th May, 2016

Heard learned counsel for the parties.

The present appeal under Clause-X of the Letters
Patent of the Patna High Court is directed against the judgment
dated 14.07.2015 by which C.W.J.C. No. 19029 of 2010 filed by
the petitioner has been dismissed by the learned Single Bench.

The appellant, who is a Statistical Enumerator in the Department of Agriculture in the State of Bihar being aggrieved by the decision contained in notification dated 20.08.2010, by which his services were allocated to the State of Jharkhand pursuant to the bifurcation of the erstwhile State of Bihar, had moved the Court in C.W.J.C. No. 19029 of 2010.

The appellant was appointed as a Backward Category candidate on the post of Statistical Enumerator in the year 1993. In terms of Section 7 of the Bihar Reorganization Act, 2000, the posts under the State were required to be apportioned and personnel already serving on the appointed day; i.e., 15.11.2000, had to be allocated the cadre afresh in a fixed ratio. In the cadre of the appellant, two Backward Category candidates were shown to be working and thus one had to be retained in Bihar whereas the other had to be sent to Jharkhand. The two persons were Surendra Prasad Singh and the appellant. Since both of them had given the option for Bihar, Surendra Prasad Singh, who was appointed on 22.01.1993, being senior to the appellant, who was appointed on 25.01.1993, in the Backward Category, the appellant being junior, was allocated the State of Jharkhand. One Devendra Prasad, who was senior to both these persons, though belonging to the Backward Category by caste, was appointed on a General (unreserved) post and, as per his choice, was allocated the State of Jharkhand, being a resident of that State.



Learned counsel for the appellant submitted that the ratio of apportionment between the State of Bihar and Jharkhand was fixed as 2:1 and as per the factual position, Devendra Prasad, Surendra Prasad Singh as well as the appellant belonged to the Backward Category, in terms of the agreed ratio, two persons had to be retained in Bihar whereas one was to be sent to Jharkhand. It was submitted that once the senior most person namely, Devendra Prasad had already been allocated the State of Jharkhand, the remaining two i.e., Surendra Prasad Singh as well as the appellant were required to be retained in Bihar. Learned counsel submitted that though Devendra Prasad may have been appointed in the General Category but that would not wipe away his basic identity of belonging to the Backward Category, which was required to be considered by the authorities. Learned counsel placed reliance on the decision of a learned Single Bench in the case of **Bhuvaneshwar Yadav vs. Union of India and Ors. (C.W.J.C. No. 6424 of 2006)** dated 23.03.2007, which has been affirmed in **L.P.A. No. 470 of 2007** by order dated 13.05.2008, in which the petitioner had challenged his allocation to the State of Jharkhand treating him to be a Backward Category person though he was appointed against a post in the Unreserved Category. Such challenge was negated by the learned Single Bench and the appeal was also dismissed. Thus, learned counsel contended that Devendra Prasad has to be treated as a Backward Category candidate irrespective of the fact that he was appointed

in the General Category.

Learned counsel for the respondents submitted that the plea of the appellant is misconceived since in the service records of Devendra Prasad, having been appointed under the General Category, has been treated in the same manner, and even under the State of Jharkhand, he would continue to be shown as a candidate of the General Category. Thus, the appellant, who admittedly is the junior most person in his category, and one person required to be sent to Jharkhand, it is but natural and also in accordance with law, that he would be allocated the State of Jharkhand, as the person senior to him namely, Surendra Prasad Singh, has given his option for Bihar and as per the formula adopted, the allocation is first by choice subject to the ratio and seniority. Learned counsel submitted that the appellant cannot take the benefit of the case of **Bhuwaneshwar Yadav** (supra) for the reason that in the said case, Bhuwaneshwar Yadav was claiming to be treated as a person belonging to a category other than to which he was appointed, which was refused, whereas in the present case, the appellant cannot get a declaration with regard to a person namely, Devendra Prasad, who himself is not aggrieved, to get him declared a Backward Category candidate and also that his service to the State of Jharkhand be treated as one in the Backward Category. In fact, the decision of the Court in the case of **Mithilesh Narain v. Union of India** reported as **2006(3) PLJR 548**, where, under identical situation, Mithilesh Narain had

objected to him being sent to Jharkhand on the plea that two other employees junior to him, though belonging to the Reserved Category, were wrongly treated as General Category candidates, the Court had rejected such plea by observing as follows:-

“10. Allocation of service to this State or the newly created State of Jharkhand is matter directly related to Government employment. It must, therefore, be decided on the basis of service record and not in light of facts of personal life. I am clearly of the view that for the purpose of allocation of service what is determining is the description of the employee in the service record and not his actual caste. That being the position I find no infirmity in the impugned allocation. No relief can be granted to the petitioner. This writ petition is dismissed.”

After hearing the rival contentions, we do not find any merit in the present appeal. The appellant cannot seek a direction with regard to a person, who has neither been made a party nor is aggrieved by the decision of his allocation to the State of Jharkhand as a General Category candidate moreso, when his initial appointment itself was in the General Category. The position that in the official records, only two persons were working at the relevant cut off time belonging to the Backward Category and both of them having opted for the State of Bihar and the petitioner being junior to the other person namely, Surendra Prasad Singh, and only one person permitted to be retained in the State of Bihar, the appellant being allocated the State of Jharkhand cannot be faulted. As per the scheme, allocation on the basis of option given cannot be enforced in isolation as it is

subject to availability of post and seniority, which are very sound principles. Moreover, in light of the reasoning given in the case of **Mithilesh Narain** (supra) as well as the discussions made in the order dated 14.07.2015 by the learned Single Bench, we do not find any reason to interfere. Accordingly, the appeal stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree

(Hemant Gupta, J)

P. Kumar
N.A.F.R.

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