

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.993 of 2014

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Kumud Kishore Sahay Son Of Sri Sadhu Sharan Sahay At Present Resident Of Mohalla- Krishi Nager, P.S.- Ashiyana Nagar, P.S.- Shashtrinagar, District- Patna, Permanent Resident Of Village and P.S.- Vaina, Via- Kesath, P.S.- Nawanagar, District- Buxar

... .. Petitioner

Versus

1. The State Of Bihar through _Principal Secretary, Home Special Department, Government Of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government Of Bihar, Patna
3. The Additional Secretary, Home Special Department, Government Of Bihar, Patna
4. The Deputy Secretary, Home Special Department, Government Of Bihar, Patna
5. The Deputy Secretary, General Administration Department, Government Of Bihar, Patna
6. The Joint Secretary, Home Special Department, Government Of Bihar, Patna
7. The Joint Secretary, General Administration Department, Government Of Bihar, Old Secretariat, Patna

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Srivastava
For the Respondent/s : Mr.Dhurjati Kr Prasad GP 14

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-04-2019

Heard learned Counsel for the petitioner and the State.

Petitioner is aggrieved by fixation of his seniority at the bottom in the list prepared subsequent upon bifurcation of the State of Bihar under the provisions of Bihar Reorganisation Act.

It is submitted that from perusal of the communication dated 13.6.2007 read with communication dated 27.4.2009



(Annexure 10 to the second rejoinder), it would be clear that petitioner's allocation to the State of Jharkhand was stayed by the respondent authority on administrative exigency and, therefore, placing him at below position in the seniority list of Assistant for State of Bihar is arbitrary and illegal.

State Counsel has drawn attention of the Court towards the policy decision based on detailed deliberation regarding consideration of individual cases for being detained in the State of Bihar even after their allocation to the State of Jharkhand. The deliberations were held between the Union of India and the State of Bihar since 2006. Policy in this regard is Annexure B dated 17.12.2009 to the counter affidavit filed on behalf of the State, wherein it has been decided, as a matter of policy, that in case of such employees whose services have been allocated to the other State, if they are retained in the original cadre on their own request they would be placed at the bottom of their seniority.

Referring to the various applications of the petitioner for being retained in the State of Bihar, dated 24.3.2007, 12.4.2007 and 2.5.2007, enclosed to the supplementary counter affidavit, Counsel for the State has pointed out that the petitioner had made request for being retained in Bihar even though he had been allocated in the State of Jharkhand as a result of cadre allocation.



The fact that the petitioner has been retained in the Bihar cadre on his own request is also apparent *prima facie* from perusal of communication dated 13.6.2007 whereby and whereunder he has been retained in the State of Bihar. Since the petitioner has been retained in the State of Bihar, on his own request, which is apparent from the records then his placement at the bottom in the seniority list in terms of uniform policy decision as contained in Annexure B to the counter affidavit cannot be objected to.

The petitioner cannot be permitted to approbate and reprobate at the same time.

The prayer in the writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23-04-2019
Transmission Date	N/A

