

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6670 of 2021

1. Rakesh Priya s/o Ramesh Narayan Prasad resident of Vouliyapar Gali No. 3, P.S. Gandhi Maidan, District Patna.
2. Sunil Kumar Singh s/o Kashi Nath Singh resident of NY1E Jhunjhun Mahal Gardanibagh, P.S. Gardanibagh, District Patgna.
3. Shambhu Rai s/o Harihar Rai resident of Village Pakariyar Purab Patti, Khushinagar, P.S. Seorahi, District Kushinagar (Uttar Pradesh).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Planning and Development, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Planning and Development, Govt. of Bihar, Patna.
3. The Directorate of Economics and Statistics through its Director, Department of Planning and Development, Govt. of Bihar, Patna.
4. The Director, Directorate of Economics and Statistics, Department of Planning and Development, Govt. of Bihar, Patna.
5. The Secretary, Directorate of Economics and Statistics, Department of Planning and Development, Govt. of Bihar, Patna.
6. The Deputy Secretary, Directorate of Economics and Statistics, Department of Planning and Development, Govt. of Bihar, Patna.
7. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore (A.G.)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-02-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

“(i) For striking down and/or declaring
ultra vires Rule 3 of the Bihar Subordinate

Statistical Cadre Rules, 2020 (hereinafter referred to as the 2020 Rules) notified by the State Government in exercise of powers under Article 309 of the Constitution of India vide Notification No. 276 dated 07.02.2020 published in Bihar Gazette (Ex-ord). Dated 12.02.2020 to the extent the said Rule renders the post of Assistant Statistical Officer from “gazetted” to “non gazetted” even with respect to persons already appointed/working on the said post prior to the commencement of the 2020 Rules notwithstanding the fact that the said post had been notified as a gazetted post since 31.05.1983 itself.

(ii) For staying the effect and operation of the impugned Rule 3 of the 2020 Rules and restraining the Respondents from taking any action in pursuance to the impugned Rules which would have an adverse effect on the service condition of the petitioner.

(iii) For directing the Respondent authorities to implement Rule 4(ii) of the Bihar Statistical Service Rules, 2009 and promote the petitioners to the post of District Statistical Officer from such date as the petitioners became eligible for such promotion and the post became vacant.

(iv) For grant of any other relief(s) which the petitioner may be entitled to get.”

On 3rd of September, 2021 we had passed the following order:-

“The short point which arises for consideration is as to whether the Notification dated 31st May, 1983 (Annexure-1 Page 21 of the writ petition) can be said to be the one governing the service conditions of the petitioners and as to whether it can be altered to their detriment, allegedly done vide enactment of Rules termed as “the Bihar Sub-ordinate Statistical Cadre Rules, 2020,” notified on 7th February, 2020, without compliance of the provisions of Section 73 of the Bihar Re-organisation Act, 2000 or not?

Let the parties address on these

issues.

Shri Jitendra Singh, learned senior counsel for the petitioners, further points out that the petitioners have raised yet another issue, i.e. the State making the first promotional post as the non-gazetted one. He points out that the respondents have not dealt with either of these aspects in their counter affidavit.

Considering the issues involved, we direct the Respondent No. 1 namely The State of Bihar through the Chief Secretary, Government of Bihar, Patna to file his personal affidavit dealing with each one of the issues raised in the petition.

Let counter affidavit be filed within a period of three weeks from today. Rejoinder thereto, if any, be filed within a period of one week thereafter.

List on 08.10.2021.”

On 29th of October, 2021 we had passed the following order:-

“Shri Lalit Kishore, learned A.G. is not in a position to assist the Court today as such, Shri Pawan Kumar, learned Assistant Counsel to learned A.G. prays for an adjournment.

Indulgent, we do so clarifying that Shri Pawan Kumar would argue the matter if on the next date of hearing, learned Advocate General is not in a position to assist the Court.

List on 24.11.2021.”

The matter was heard for some time on 1st of December 2021 and was adjourned again on 14th of December 2021, when we had passed the following order:-

“Heard for some time.

List on 8th of December, 2021.”

On 2nd of February, 2022 we had passed the following order:-

- 1)** That this writ petition is being filed for seeking following reliefs:-
- (i) that the said post had been notified as a gazetted post since 31.05.1983 itself.
 - (ii) For staying the effect and operation of the impugned Rule 3 of the 2020 Rules and restraining the Respondents from taking any action in pursuance to the impugned Rules which would have an adverse effect on the service condition of the Petitioners.
 - (iii) For directing the Respondent authorities to implement Rule 4(ii) of the Bihar Statistical Service Rules, 2009 and promote the Petitioners to the post of District Statistical Officer from such date as the Petitioners became eligible for such promotion and the post became vacant.
 - (iv) For grant of any other relief(s) which the petitioner may be entitled to get.

In so far as Relief No. 1(iii) is concerned, Shri Jitendra Singh, learned senior counsel appearing on behalf of the petitioner does not press the present petition reserving liberty to seek appropriate remedy in accordance with law.

Liberty as prayed for is granted.

Since September, 2021, we have been adjourning the matter only on the request of the learned Advocate General, expecting the Government to take a call as to whether the Government would rectify the mistake or not?

Today, Shri Pawan Kumar, learned Assistant Counsel to learned Advocate General states that the matter is under active consideration with the Government, and as such, prays for an adjournment by two weeks.

Indulgent, we do so, clarifying that if before the next date of hearing no action in the affirmative is taken, we would be constrained to decide the petition on merits.

List this case on 16th of February, 2022.”

There is no dispute with regard to the impugned notification. The provisions of Sections 72 and 73 of the Bihar Re-organization Act read as under:-

“72. Provisions relating to services in Bihar and Jharkhand—(1) 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 the 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 relation to members of any All-India Service.”

Hon’ble the Apex Court in **T.R. Kapur & Ors. Vs. State of Haryana & Ors., 1986 Supp SCC 584**, has observed as under:-

“**12.** It is not suggested that the State Government ever moved the Central Government seeking its prior approval to the proposed amendment of Rule 6(b) of the Class I Rules. In that connection, it is necessary to recall that prior to the reorganisation of the States under the States Reorganisation Act, 1956, a conference of the Chief Secretaries of the States that were to be affected was held at Delhi on May 18 and 19, 1966 for the purpose of formulation of the principles upon which integration of services was to be effected. The Government of India by its circular dated May 11, 1957 to all the State Governments stated inter alia that it agreed with the views expressed on behalf of the States’ representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This circular has been interpreted as a prior approval of the Central Government in terms of the proviso to sub-section (7) of Section 115 of the Act in the matter of change of the

conditions of service relating to departmental promotions. These considerations however do not arise in the present case. Admittedly, there was no Chief Secretaries Conference as was held prior to the reorganisation of the States under the States Reorganisation Act, 1956. Nor was there any communication issued by the Central Government conveying its previous approval of the changes in the service conditions which the States of Punjab and Haryana might make in terms of the proviso to Section 82(6) of the Punjab Reorganisation Act, 1966. Under the States Reorganisation Act, 1956 so also under the Punjab Reorganisation Act, 1966, the power of the Governor to make rules under the proviso to Article 309 of the Constitution had been controlled by the proviso to Section 115(7) of the former Act and Section 82(6) of the latter. It follows that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-sections (1) or (2) of Section 82 of the Act could not be varied to his disadvantage except with the previous approval of the Central Government. That being so, the impugned notification issued by the State Government purporting to amend Rule 6(b) of the Class I Rules w.e.f. July 10, 1964 which rendered members of Class II service who are diploma holders like the petitioners ineligible for promotion to the post of Executive Engineer in Class I service making a degree in Engineering essential for such promotion, although they satisfied the condition of eligibility of 8 years' experience in that class of service, must be struck down as ultra vires the State Government being contrary to Section 82(6) of the Punjab Reorganisation Act, 1966."

Before us, it could not be disputed that the impugned notification dated 17th of February 2020 notifying the Bihar Subordinate Statistical Cadre Rules, 2020 was not framed in compliance of and in consonance with the provisions of the Bihar Re-organisation Act (reproduced supra). It is the mandate of the Act to look into the language, intent and scope of the Act.

It is evident that compliance of the provisions, reproduced supra, is condition precedent prior to the enactment of

the impugned rules.

On such ground alone, we quash and set aside the Rule 3 of the Bihar Subordinate Statistical Cadre Rules, 2020, being repugnant to the provisions of the Bihar Re-Organisation Act.

The instant petition stands disposed of.

Interlocutory Application(s), if any, stands disposed off.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	