

(2011) 02 JH CK 0072
In the Jharkhand High Court
Case No : L.P.A. No. 243 of 2008

Arun Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 74

Citation : (2011) 2 JCR 255

Hon'ble Judges : Bhagwati Prasad, C.J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Appellant.
2. This Court has already taken a view in a similarly situated case which reads as follows:

A person on deputation cannot claim right to absorption because his lien continues to be with the original department, and the department, where the person goes on deputation may and may not choose to absorb. There being no statutory provision, the Appellant has been asked to come back to his original post. It cannot be said that any illegality has been committed because none of the conditions of service, as assured to him at the time of his recruitment, gets attached to that.

3. Today the learned Counsel for the Appellant has drawn our attention to Section 74 of the Bihar Reorganization Act, 2000 and has emphasized that the employees of the erstwhile Government of Bihar are required to be dealt with according to Section 74 of the Bihar Reorganization Act. We have no quarrel with the proposition. The Section says that the employee should continue to enjoy his post which he held. The Appellant had held a post with BISCOMAUN on substantive appointment. What he wants to say by this appeal is a deputation arrangement. We are afraid that deputation arrangement is not covered when he

is a substantive employee of State in terms of Section 74 of the Bihar Reorganization Act.

4. Learned Counsel also emphasized that there was a ministerial decision. We have seen the decision and that decision was a proposal by a single minister with the noting that the proposal has to be put up before the Cabinet and the matter was never put up before the Cabinet. Therefore, the single Minister's decision cannot be considered as a decision of the Government. Learned Counsel has said that the Bihar Government has acted upon that decision but that cannot make an instance which is binding because it is for the executives to make a decision and follow that. May be that decision is legal or illegal, when it is tested in Court that test has to be passed. We find that both those decisions are not being a decision of the Cabinet, they cannot be treated a decision taken by the Government.

5. Learned Counsel further submits that after 2000, the Appellant has been continuing and it should be deemed that the Jharkhand Government has acted upon those decisions and the present litigation shows why the Appellant had continued. In that view of the matter, this argument is also of no significance.

6. The questions of legitimate expectation and promisory estoppel were also raised but we do not find any material available before us which would constitute these two legal grounds in favour of the Appellant. In that view of the matter, they are just a kind of argument which are being raised for the purpose of being raised only.

7. Learned Counsel submits that the Patna High Court judgment was upheld by the Hon'ble Supreme Court in SLP and that makes it binding on this Court.

8. We are afraid, it shows the ignorance of the learned Counsel about the law because any SLP dismissed in limine by the Supreme Court upholding a decision, is not binding upon us.

9. Therefore, the Appellant having lien with his first employer, he will be dealt with accordingly. His repatriation cannot be seem to be illegal and we do not see that the learned Single Judge has committed any illegality in rejecting his writ petition. There is no force in the appeal which is accordingly dismissed.