

(2001) 08 JH CK 0058

In the Jharkhand High Court

Case No : CWJC No. 2202 of 2001 with W.P. (S) No. 2692 of 2001

Arvind Vijay Bilung with V.N. Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 74, 76

States Reorganisation Act, 1956 — Section 115(2), 115(3), 116, 116(1), 116(2)

Citation : (2002) 50 BLJR 336

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : U.K. Choubey and Delip Jerath, V.P. Singh, for the Appellant; B.B. Sinha, G.A. and A. Allam, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—Since the issue involved in both the writ petitions are of vital public importance, in as much as these relate to the status of every person, who immediately before reorganisation was serving in connection of the existing State, of Bihar and the powers of the successor-State of Bihar and Jharkhand, they were heard together and are being disposed of by this common judgment and order.

2. The petitioner, Arvind Vijay Bilung of CWJC No. 2202/2001, a member of State. Education Service, was posted at Jehanabad (now in the present State of Bihar) between 1996-98. Since October 16th, 1998, he was posted as District Superintendent of Education, Chatra (now in the State of Jharkhand).

3. The other petitioner, V.N. Mishra of WP (S) No. 2692/2001, a member of State Forest Service, was posted as Divisional Forest Officer, State Trading Division, Gumla (now in the State of Jharkhand). Subsequently, he was posted as Divisional Forest Officer, Minor Forest Material Project Division, Jamshedpur (now in the State of Jharkhand).

4. At that stage the Bihar Reorganisation Act, 2000 (Central Act, No. 30 of 2000), hereinafter referred to as "the Act, 2000", was enacted which became operative from November 15, 2000, referred to in the Act 2000 as the appointed day, and by virtue of its provisions and under its terms, both the petitioners continued to hold, the posts and offices, at the same place, within the State of Jharkhand.

5. While so functioning, the present State of Bihar from Education Department issued impugned notification No. 371, dated May 20, 2001 suspending the petitioner, Arvind Vijay Bilung in contemplation of a departmental proceeding. By another notification No. 1287, dated May 5, 2001, issued by the present State of Bihar from Forest and Environment Department, the petitioner V.N. Mishra was also suspended in contemplation of a departmental proceeding.

6. In the present case, the petitioners while challenged their respective notification of suspension raised the question of jurisdiction of the present State of Bihar to suspend them, having posted within the State of Jharkhand.

7. The sole question raised and to be determined as to which of the State, the present State of Bihar or Jharkhand has jurisdiction to take any disciplinary action including suspension, in respect to a person posted within the State of Jharkhand ?

8. Admittedly, the cadre of State Education Service (known as "Bihar Education Service") and the State Forest Service (known as "Bihar Forest Service"), of which petitioners are respective members, have not yet been bifurcated. No notification has been issued by the Central Government allotting the services of the members of aforesaid two services, even provisionally.

9. Learned counsel for the State of Bihar relied on Section 72 of the Reorganisation Act, 2000, to suggest that the present "State of Bihar is the disciplinary authority in respect to the Government employees, who have not been allotted to serve the State of Jharkhand. It was also submitted that no general or special order of allotment to serve the "State of Jharkhand having issued in respect to the petitioners u/s 72. they are provisionally continuing to serve in connection with the affairs of the State of Bihar. The State of Jharkhand has no jurisdiction to take any disciplinary action for the present.

10. Learned counsel for the State of Jharkhand, on the other hand, relied upon Section 71 of Reorganisation Act, 2000. According to him, the State of Jharkhand being deemed to be the appointing authority is competent to take disciplinary action against a person holding post and office in the State of Jharkhand.

11. Mr. V.P. Singh, learned counsel on the request of the Court assisted as amicus curiae relied on certain provisions of the Bihar Reorganisation Act, 2000, as also "the States Reorganisation Act, 1956", hereinafter referred to as "Reorganisation Act, 1956", for short, some of the provisions being almost same and similar.

12. For an appropriate decision on the issue, it is necessary to avert to certain

provisions of the Reorganisation Act, 2000. Those material in this context are Sections 72, 74 and 76 of the Act, 2000, apart from relevant definitions.

The definition of "existing State of Bihar", as stipulated u/s 2(e), means the State of Bihar as was existing immediately before the appointed date, November 15, 2000. The "successor-State", in relation to the "existing State of Bihar", means the "State of, Bihar" or "Jharkhand", as stipulated u/s 2(j).

The "provisions relating to services in Bihar and Jharkhand" stipulated u/s 72; "provisions as to continuance of officers in the same post" made u/s 74 and the "power of Central Government to give directions" u/s 76 of Reorganisation Act, 2000.

13. Before proceeding to consider those provisions, it would be convenient to take help of the State Reorganisation Act, 1956 to trace out the similarity. Sub-sections (1), (2) and (3) of Section 72 of Reorganisation Act 2000, is almost same and similar to Sub-sections (2), (3) and (4) of Section 115 of Reorganisation Act, 1956.

Similarly Section 74 of Reorganisation Act. 2000, is almost same and similar to Section 116 of Reorganisation Act, 1956 and Section 76 of Reorganisation Act, 2000, similar to Section 117 of Reorganisation Act, 1956.

14. Similar provision of Sections 115(3) and 116 of the Reorganisation Act, 1956, fell, for consideration before the Madhya Pradesh High Court in the case of Balkishan Chaturvedi Vs. The Chief Secretary, Govt. of Bhopal and Another, . In the said case, the Government officer working in the area which was part of State of Rajasthan begun to work in the State of Madhya Pradesh by the transfer of that area during the reorganisation of the State. The departmental proceeding started against such officer after the appointed date, November 1, 1956, by the State of Madhya Pradesh for alleged misconduct. Taking into- consideration the provisions of Sections 115(3) and 116 of Reorganisation Act, 1956, the Court held that the officer will be deemed to be a servant of the State of Madhya Pradesh with effect from November 1, 1956, notwithstanding the delay in making of order u/s 115(3) by the Union Government. The proceeding having started after the appointed date. November 1, 1956, the Court held that the State of Madhya Pradesh were the competent authority, the officer having posted in the State of Madhya Pradesh.

15. In the case of N. Chandramoull v. State of Mysore AIR 1971 Mys 53, taking into consideration the aforesaid provisions of Reorganisation Act, 1956, the Court held Section 116 as complementary to Section 115(2), merely substituting the successor-State as the appointing authority in place of the parent- State.

16. The Supreme Court in the case of Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, , held that the expression "competent authority" occurring in this Section 116(2) of Re organisation Act, 1956, cannot be considered in isolation apart from the rest of the provisions of the Act. It has

to be read in conjunction with, construed and understood as having the same meaning as the expression "appropriate authority" contemplated by Sub-section (1) of Section 1.16 of the Reorganisation Act, 1956.

17. In the case of *The State of Rajasthan Vs. Ram Saran*, , the apex Court held that the powers of State Government were expressly the same by (2) of Section 116 of Reorganisation Act. 1956, and permits the State Government being a competent authority to pass in relation to person officiating at the time of merger, affecting his continuance in the officiating post.

18. So far as Reorganisation Act, 2000, is concerned, the relevant provisions are set-out-hereunder.:

"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.

74. Provisions as to continuance of officers in some post.--Every person, who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor-States shall continue to hold the same post or office in that successor-State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor-State :

Provided that, nothing in this Section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

76. Power of Central Government to give directions.--The Central Government may give such directions to the State Government of Bihar and the State

Government of Jharkhand as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions."

19. From bare perusal of Sections 72 and 74, it will be evident that the provisions speak of three States, i.e., "the existing State of Bihar", i.e., the State of Bihar as was existing prior to November 15, 2000, the parent-State, and the two "successor-States, namely, "the present-State of Bihar" and the State of Jharkhand".

20. u/s 72 of Reorganisation Act, 2000, every person, who was serving in connection with the affairs of the "existing State of Bihar", on and from November 15, 2000, provisionally continue to serve in connection with the affairs of the present State of Bihar. It makes no distinction between person posted in one or other State since reorganisation. However, by general or special order of the Central Government, a person can be asked to serve provisionally in connection with the affair of the State of Jharkhand. .

21. The Central Government is the authority u/s 72(2) of the Reorganisation Act, 2000, to determine the successor-State to which every person to be finally allotted for service, including the effective date from which such allotment is to take effect or deemed to have taken effect.

A period of one year prescribed under Proviso to Sub-section (1) to Section 72 for Central Government to issue general or special order provisionally allocating a person to serve the State of Jharkhand.

22. Section 74 of the Reorganisation Act, 2000, is a deeming provision whereunder a person, who was holding or discharging duties of any post or office in connection with the existing State of Bihar prior to November 15, 2000. On and from November 15, 2000, such person shall continue to hold the same post or office, In that successor-State under which the area falls, and shall be deemed, on and from November 15, 2000, to have been duly appointed to the post or office by the Government or appropriate authority in that successor-State, under whom the posts and office falls.

23. From the aforesaid provision, it will be clear that a person, who is holding post or office in the State of Jharkhand as on November 15, 2000, deemed to be appointed by the Government of Jharkhand or the appropriate authority of the State of Jharkhand. Continuance of such person can be affected only by the State of Jharkhand or its appropriate authority.

Similarly, a person, whose post or office falls within the present State of Bihar, on and from November 15, 2000, continues to hold the same post or office in the present-State of Bihar and shall deemed to have been duly appointed to the post or office by the present-" State of Bihar or its appropriate authority.

24. After November 15, 2000, there may arise a situation to take disciplinary action against a person. To find out the authority of a Government or appropriate

authority under the Government, different factors require to be seen like allotment to serve a State as made by Central Government, the post and office such person holds and the area in which post and office falls.

There can be three categories of persons, serving in one or other successor-State, namely:-

(i) a person serving a particular successor-State having been finally allotted to serve that particular State referred to as first category.

(ii) a person by general or special order issued by Central Government is asked to provisionally serve in connection with the affairs of a particular successor-State and referred to as second category.

(iii) a person in respect of whom no any general or special order issued by the Central Government to serve one or other successor-State, either u/s (sic) Sub-section (1) or Sub-section (2) of Section 72 of Reorganisation Act, 2000, referred to as third category.

25. So far as first category is concerned, there should not be any dispute to determine the appointing authority/appropriate authority. Such persons having finally allotted to serve a particular successor-State and being posted in office in such successor-State, the appointing authority will be that particular State or appropriate authority of such successor-State.

In respect of second category, though no general or special final allocation is made by Central Government under Sub-section (2) to Section 72 of Reorganisation Act, 2000, provisional order of allotment to serve a particular successor-State having made, on joining a post and office of such successor-State, the appointing authority would be competent authority to take disciplinary action, i.e., the successor-State where allotted to serve, posted and holding office.

For example, if person "X" is provisionally allotted to serve State of Jharkhand, posted and holding office in the State of Jharkhand, not only he will serve the State of Jharkhand u/s 72 but also deemed to be appointed by the State of Jharkhand u/s 74 of the Reorganisation Act, 2000.

During such provisional period of service to the State of Jharkhand, the successor-State of Bihar will have no control or jurisdiction over such person and cannot take any disciplinary action.

Similarly, if "Y" is provisionally allotted to serve successor-State of Bihar, posted and holding office in the successor-State of Bihar, the appointing authority or the appropriate authority of the State shall be successor-State of Bihar u/s 74 of the Reorganisation Act, 2000.

26. One may raise dispute in respect to third category, i.e., those in respect to whom, no general or special order, either provisionally or finally, have been issued by the Central Government to serve one or other successor-State.

So far persons posted and holding office in the successor-State of Bihar, as they provisionally continue to serve the successor-State of Bihar under Sub-section (2) of Section 72, the successor-State of Bihar or appropriate authority of State as deemed to be appointing authority u/s 74 of the Reorganisation Act," 2000, there should not be any controversy that the successor-State of Bihar or appropriate authority of that State can take disciplinary action.

It is only those amongst third category, who since November 15, 2000 continue to hold post and office, area of which falls within the State of Jharkhand, in respect of whom no general or special order of allotment issued by the Central Government under Sub-section (1) or (2) of Section 72. One may raise dispute as to who will be the competent authority to take disciplinary action ?

27. Admittedly, every person, who immediately before November 15, 2000, was serving "the existing-State of Bihar", their appointing authority was the "existing-State of Bihar, or the appropriate authority of said "existing-State of Bihar.

On and from November 15, 2000, for all purpose, the "existing State of Bihar is not in existence having bifurcated and two successor-States, both came in existence since November 15, 2000, one cannot compare the "existing-State of Bihar" as was existing prior to November 15, 2000, nor can make it synonymous to successor-State of Bihar, which came into existence on November 15, 2000.

As there should be an appointing authority for every person, "the existing-State of Bihar" for all purpose having become non-existence, as it became necessary to make one or other successor- State or appropriate authority of that successor-State to be the appointing authority, the provision of Section 71 of Reorganisation Act, 2000, seems to have been incorporated by the Parliamentarians,

28. It is a settled law that every clause of a statute is to be considered with reference to the context and other provisions of the Act to make it consistent and harmonious meaning of the statute relating to subject-matter.

The expression "provisionally continue to serve in connection with the affairs of the State of Bihar" referred to Sub-section (1) to Section 72 cannot be construed in isolation, but to be read in conjunction with Section 74, one being complementary to other, substituting the successor-State as the appointing authority in place of the parent-State. Such is the view of Mysore High Court in *N. Chandramouli v. State of Mysore* AIR 1971 My 53.

Expression "competent authority" occurring in Proviso to Section 74 cannot be construed in isolation. It is to be read in conjunction with, construed and understood as having the same meaning as the expression "appointing authority" contemplated by sub-section (1) of Section 74. Such is the view of the apex Court in the case of *"Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg, (supra)*.

29. In absence of general or special order of the Central Government, a person

posted in the area "of State of Jharkhand though provisionally continue to serve in connection with the "affairs of the State of Bihar under Sub-section (1) of Section 72, it is to be read along with provision of Section 74, both being complementary to each other.

A person holding post which is not abolished by or because of the State Reorganisation Act, would continue to hold the post and office and will be deemed to have been appointed to the post by the appropriate/ competent authority of the successor-State.

30. In the aforesaid background, in respect to persons holding post or office in the area of State of Jharkhand, the appointing authority being the State of Jharkhand, till they are not allocated in the State of Bihar, the competent authority to take disciplinary action shall be the State of Jharkhand and not the State of Bihar.

31. Such was the situation in the case of Balkishan Chaturvedi Vs. The Chief Secretary, Govt. of Bhopal and Another, , the officer, who was working in the area, that was a part of State of Rajasthan, begin to work in the State of Madhya Pradesh by the transfer of that area during the. reorganisation of State, no general or special order was issued by the Central Government in respect to such officer, the Court taking into consideration similar provision held that the successor-State of Madhya Pradesh is the competent authority to punish and not the State of Rajasthan.

32. As the petitioners were holding posts and office in an area "Chatra and Jamshedpur", respectively, which since November 15, 2000, fall within the State of Jharkhand, they will not only continue to hold the same post and office in the State of Jharkhand, but shall be deemed to have been duly appointed to such post or office by the Government of Jharkhand on and from November 15, 2000, till they are allotted a State, the State of Jharkhand shall be the competent authority to take disciplinary action.

For the same reason, the State of Bihar shall have no jurisdiction to take any disciplinary action in respect to a person holding post or office in the State of Jharkhand, having deemed to be appointed by the Government of Jharkhand till allocated the State of Bihar.

33. In view of the provisions referred to and discussions as made above, the present State of Bihar having no jurisdiction to, take disciplinary action against persons holding posts and office in the State of Jharkhand, like petitioners, the impugned orders of suspension containing, in notification, dated May 20, 2001 relating to petitioner Arvind Vijay Bilung and notification, dated May 5, 2001 in respect to petitioner V.N. Mishra cannot be upheld and they are set-aside.

34. However, it will be open to the State of Jharkhand to pass any order, in accordance with law if it so chooses. The petitioners should bring this order to the notice of Secretary of their respective Department.

35. Both the writ petitions are, accordingly, allowed.

36. Writ petitions allowed.