

(2005) 11 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 4392, 4515, 4564 and 4743 of 2004

Bimal Kumar Jha and Others, Sachidanand Prasad and
Another, Md. Neyaz Waris and Nawal Kishore Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 72(2), 75

Citation : (2006) 1 BLJR 109 : (2006) 1 JCR 72

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. In all the cases, as common order is under challenge and common questions of law involved, they were heard together and are being disposed of by this common judgment.

2. The petitioners have challenged the Order No. 6 (BJ/2004, dated 29th July, 2004 issued by the Director (SR), Ministry of Personnel, Public Complaint and Pension, Government of India, New Delhi, whereby and whereunder, in exercise of power conferred u/s 72(2) of the Bihar Reorganisation Act, 2000, the services of petitioners and some others have been placed under the successor State of Bihar.

3. The grievance of the petitioners is that though they opted for placement of their services under the successor State of Jharkhand, but in violation of the guidelines issued by the Central Government, their services have been placed and allocated under the successor State of Bihar.

4. It may be mentioned that the then State of Bihar was organized in pursuance of the Bihar Reorganisation Act, 2000 and successor States of Bihar and Jharkhand came into existence since 15th November, 2000. After such

reorganisation, the services of State Government employees were to be placed under one or other successor States of Bihar or Jharkhand. Step was taken in pursuance of Section 72 of the Bihar Reorganisation Act, 2000 to allocate the services of the employees to one or other successor State.

5. u/s 72, the Central Government has been empowered to determine the successor State to which every State Cadre employees to be allotted and the date from which such allotment to be made. u/s 75, the Central Government has been empowered to establish one or more Advisory Committees for the purpose of assisting it to ensure fair and equitable treatment to all persons affected by such action and for proper consideration of any representation made by such person.

6. The Central Government issued notifications constituting State Advisory Committees and also issued guidelines to be followed by the State Advisory Committees to ensure fair and equitable treatment to the employees. One guideline was issued on 13th September, 2000, whereby while a Reorganisation Cell was set up, guideline was issued as to how posts should be distributed and allocated amongst the successor States of Bihar and Jharkhand. By a subsequent letter dated 21st December, 2000, a State Advisory Committee was constituted and principal for final allocation of employees was enumerated, relevant portions of which are quoted hereunder :

III. Mandate for the State Advisory Committee :

1. The State Advisory Committee after going through the details of sanctioned posts categorywise, cadre-wise, grade-wise, shall finalise the distribution of posts between the successor States keeping in view the administrative structure of departments finalised for the new successor States by the Central Government as also the work requirement of individual departments in the successor States post reorganisation. Guidelines issued by the Central Government through Secretary (Personnel)'s demiofficial letter No. 28/1/ 2000-SR (S), dated the 13th September, 2000 may also be referred....

IV. Principles for final allocation of employees :

1. Final allocation of employees would be based on the distribution of post to be finalised by the State Advisory Committee;

2. The final allocation of all employees should be such that it is evenly distributed in respect of age and seniority so as to make composite an balanced cadre in the successor States. This is necessary to ensure the promotional prospects of individuals are neither unduly accelerated nor substantially reduced in the successor States to which they are finally allocated;

3. All employees who have been working in the State of Bihar existing immediately before the appointed day and are belonging to such State services which are transferable anywhere in the entire State should be covered for final allocation. This would include long absentees, those on leave preparatory to

retirement, those on other kinds of leave, training and on deputation. In other words, there should not be any case of unallocated employee who is not finally allocated to either of the successor State;

4. The reservation policy as applicable in the State of Bihar existing immediately before the appointed day, shall apply in respect of final allocation of employees to either of the successor State;

5. State service employees retiring within two years from the appointed day should not be covered for final allocation to a successor State other than which they have been serving before the appointed day;

6. In respect of educational institutions including those imparting technical and medical education, the State Advisory Committee may consider making their final allocation earlier than other services preferably by the end of current academic session so that there is no mid-term dislocation of such employees arising out of the Reorganisation of States and that the academic sessions are not disrupted on account of their final allocation;

7. The State Advisory Committee may take a view regarding final allocation of such State service personnel who are currently working in statutory/non-statutory bodies as to whether their final allocation should be held back till the bodies are in position or otherwise: and

8. Where both husband and wife are Government employees, it would be prudent, while making final allocation to allocate them to one State, as far as practicable;

9. Notwithstanding the guidelines indicated above, the State Advisory Committee would be at liberty to consider any principle/factor which may become crucial in deciding the allocation of employees to the successor States.

VI. Methodology for submission of representations by employees :

1. State Government employees who feel aggrieved by the tentative final allocation list, as prepared by the State Advisory Committee, would be at liberty to submit their representations to the Reorganisation Cell constituted by the State of Bihar before the appointed day;

2. State Government employees who have been provisionally ordered to serve in connection with the affairs of one of the successor States can also submit their representations to the Chief Secretary of the State in which they are working who should then forward these representations to the Reorganisation Cell constituted by the State of Bihar before the appointed day;

3. All representations from employees should be self-contained, clearly indicating the specific points of grievance against the provisional/tentative final allocation list. The representations should be addressed to the Chairman, State Advisory Committee ;

4. The employees may be suitably advised to ensure that representations from their end, if any, should be submitted within the prescribed time limit.

7. The State Advisory Committee held its meeting from time to time. It forwarded format and proforma to all Departments calling for information regarding posts, personnel, reserved categories, option given by one or other employees etc. Separate options were also called for from the State level Cadre Employees.

8. After receipt of information, options received from employees and taking into consideration the guidelines issued by the Central Government, the State Advisory Committee forwarded its recommendations to the Central Government. A tentative final allocation list was prepared by the State Advisory Committee against which objections were also called for from concerned employees. After receipt of such objections, the Central Government considered each case and issued final allocation order u/s 72(2) of the Bihar Reorganisation Act, 2000 including the impugned order dated 29th July, 2004.

9. Counsel for the petitioners submitted that various illegalities have been committed in the matter of allocation of State. According to them, even the State of Jharkhand has accepted that the State Advisory Committee has not followed the guidelines issued by the Central Government in its letter and spirit. According to the petitioners, the guidelines issued by the Central Government are mandatory and there was no occasion to deviate from such guidelines. On the other hand, the state Advisory Committee itself has accepted that it was not possible for them to follow the totality of the guidelines issued by the Central Government.

10. The aforesaid submission cannot be accepted in view of guidelines contained at Clause (9), as circulated vide letter dated 21st December, 2000 and quoted above.

By the said guidelines the Central Government has made it clear that notwithstanding the guidelines issued by the Central Government, the State Advisory Committee would be at liberty to consider any principle/factor, which may become crucial in deciding the allocation of employees to the successor State. The manner in which the services of the employees have been allocated, in the present cases, no specific infirmity has been brought to the notice of the Court.

11. Similar issue fell for consideration before a Division Bench of this Court in the case of Prakash Chandra Sinha etc. Vs. Union of India (UOI) and Others, That was fagged with batch of cases and decided by one common judgment. In the said case, provisions laid down under Sections 72 and 75 of the Bihar Reorganisation Act, 2000 fell for consideration. Similar argument was also made by various parties. Having noticed such submission, the Court observed that unless the Court is compelled to interfere on the basis of the clear illegality or unreasonableness, the Court should leave the bifurcation as it is. While the Court

noticed that the State Advisory Committee had not strictly adhered to some of the directions originally issued by the Central Government, but taking into consideration the fact that the Central Government had itself issued supplementary directions which were also to be implemented, refused to interfere with the order of bifurcation of Cadre and allocation of State. This judgment, as informed by the counsel for the State, has been affirmed by the Supreme Court.

12. In none of the cases, any specific illegality has been pointed out by one or other individual petitioner, except the general allegation has been made that the guidelines have not been followed. Without making any specific averment, on the basis of dates supplied in separate unaffidavited sheets, it was suggested that the balance was not maintained and for that one or other petitioner has been wrongly allocated the successor State of Bihar. But in absence of such specific averments and affidavit, no such finding can be given nor it can be alleged that the impugned order is illegal. Further, this Court cannot sit in appeal over the decision of an Expert Committee, namely, State Advisory Committee, which has determined the cases of individuals on the basis of guidelines issued by the Central Government and options given by one or other persons.

13. In the result, there being no merit, all the writ petitions are dismissed. However, there shall be no order, as to costs.

Amareshwar Sahay, J.

14. I. agree.