

**(2014) 05 JH CK 0035**  
**In the Jharkhand High Court**  
**Case No : W.P. (S) No. 1112 of 2005**

Guru Soren

APPELLANT

Vs

The Union of India

RESPONDENT

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**Date of Decision :** 02-05-2014

**Acts Referred:**

Bihar Reorganisation Act, 2000 — Section 73  
Constitution of India, 1950 — Article 14

**Citation :** (2014) 4 JLJR 85

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** Delip Jerath, Abhinash Kumar, Amit Kumar and Rajesh Kumar,  
Advocate for the Appellant; Shweta Singh, J.C. to G.P.-V and Binit Chandra, J.C.  
to G.A, Advocate for the Respondent

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## Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. These two petitioners, who are said to be in the services of Home Guards as Washer Man and Constable respectively, have been allocated to the successor State of Bihar vide impugned notification dated 05.01.2005, Annexure-4 issued by the respondent-Ministry of Personnel, Public Grievance and Pension, Department of Personnel and Training, Government of India.

2. By and large from the pleadings made on behalf of the writ petitioners and supporting annexures, the petitioners have inter alia tried to make out a case that:--

(i) They had exercised their option to remain in Jharkhand, which has not been considered.

(ii) They belong to Scheduled Tribe category and permanent resident of Jharkhand, which has not also been considered.

(iii) There are vacancy in the State of Jharkhand, but the respondents have chosen to allocate them to the State of Bihar in an arbitrary and illegal manner

contrary to the guidelines of the State Advisory Committee and guidelines issued by the respondents-Union of India.

3. The answer to each of these contentions are found in specific manner in the affidavit of the respondent No. 7, which is State Advisory Committee. On the first ground, the respondents have taken a categorical stand at para-18 that the Administrative Department had reported the name of the petitioners showing their options as "not received". The State Advisory Committee has to go by the information furnished by the department. The affidavit of the said respondent at para-9 lays down the summary of the salient features of the principles and procedures, as settled by the committee consisting representative of Government of India along with representatives of successor States for allocation of the employees of the erstwhile State of Bihar to either of the Successor State. A perusal of the same indicates that the Committee called for a detailed statement of sanctioned posts of various employees from the concerned Administrative Department of the Government of Bihar along with Bio-data of the personnel as existing on the appointed date i.e. 15.11.2000. Options for allocation to the preferred State were invited from State level employees through their Administrative Department and also by publicity through newspaper advertisements.

4. The Committee, after scrutinizing the sanctioned posts, determines a ratio in which they are to be apportioned in the successor State of Bihar and Jharkhand, details of such method have been indicated. The Committee also took into account that working of the personnel in a particular cadre, may be less than the sanction strength. Working strength of the personnel in the cadre in the successor States is apportioned in the same ratios as explained in the preceding para. The working strength is thereafter broken up into five categories according to reservation status namely ST, SC, MBC, BC and General. The information furnished by the department in the prescribed proforma for Bio-data regarding the reservation category forms the basis for such classification by the committee, which does not procure any independent information. The working strength is, thereafter split in the same ratio between the successor State as the composite working strength of the cadre to ensure that cadre being allocated to each successor State maintains the same reservation profile as the cadre serving in the undivided Bihar. Thereafter on the question of apportionment of the employees belonging to the ST Category, it has been stated that as per the instruction of the Government of India, out of total number of ST employees in any cadre or group of posts of undivided Bihar, only as many employees are allocated forming 1% minimum of the total number of personnel to be allocated to Bihar unless larger ST employees want to remain in Bihar by exercising option to this effect. Detailed procedures in the allocation of ST candidate as contained in para 9 (e) have further been explained the sub paragraphs.

5. After discussing mode and procedure for allocation of the ST employee at para-9(h), it has been further stated that in the first transaction all employee,

who have opted for Bihar are allocated to Bihar; in the second transaction the employees, who have exercised option for either State (as distinguished from no option cases) are allocated to Bihar; in the third transaction the employees who have not exercised option but whose home district falls in Bihar are allocated to Bihar; in the fourth transaction the employees who have not exercised option but whose home district falls outside Bihar/Jharkhand, in a third State, are allocated to Bihar; in the fifth transaction, the employees, who have not exercised option but whose home district falls in Jharkhand are allocated to Bihar; in the sixth transaction the employees, who have exercised option for Jharkhand are allocated to Bihar in order of juniority till Bihar quota is fulfilled. The subsequent transaction may not be necessary for determination of the case of the petitioners as according to the said respondents by the same affidavit individual case of the present petitioners has been dealt with in para-19, which justified their allocation to the State of Bihar. The said Para-19 is quoted hereinbelow for better appreciation:--

"19. That in respect of the statements made in para 9 of the Writ Petition, it is humbly submitted as follows.-

I. That the department had furnished the list of personnel in the "DHOBBI" cadre in the prescribed proforma. The total working strength was 37 which was apportioned between Bihar and Jharkhand as 27 and 10 respectively, following the principles stated in Para 9(b), The petitioner No. 1 has been shown in the list with home district at Dumka, reservation category as S.T. option as "not received". In the total working strength he was the only member of S.T. Thus going by the principle of at least 1% representation in Bihar the single quota of S.T. went to Bihar. Clearly either Bihar or Jharkhand had to receive 0% or 100% of the working strength. As per the Government of India guidelines Bihar could not be the state receiving 0%.

II. That the name of petitioner No. 2 was reported by the administrative department in the list of "Sipahi" cadre. His reservation category was shown as S.T, option as "not received" and home district as Jamshedpur. There were altogether 222 persons in this cadre. This was apportioned between Bihar and Jharkhand as 169 and 53 in the ratio of 3:15:1 following the principles stated in para 9(b). The working strength of S.T. in the cadre was only 2, which happened to be less than 1% of the total. Applying the principle agreed in the minutes of the meeting of the SAC held on 09/03/02, para 7.3 of Annexure A to this counter affidavit, it was found that the Jharkhand quota on the above mentioned apportioned ratio works out to less 0.5 i.e. to Zero."

6. The perusal of the aforesaid stand taken by the respondent No. 7 indicates that a detailed method and procedure for allocation of the personnel to the either of the successor State, those like the petitioners, who belong to ST category and are permanent, resident of Jharkhand have been dealt with. The petitioners have neither rebutted the aforesaid submission by way of any rejoinder nor able to assail the procedure and methodology for allocation to the successor State on

the basis of any violation of Article 14 of the Constitution of India or that the guidelines are in teeth of the relevant provisions of Bihar Re-organization Act, 2000, chapter VIII thereof. Apparently, the petitioners had not exercised any option to remain in the State of Jharkhand and even otherwise also going by the principle of 1% representation in Bihar, the person belonging to quota of S.T. went to Bihar. Therefore, these two petitioners have been allocated successor State of Bihar by the impugned notification. The said exercise has been carried out at the relevant time on the basis of information submitted by the Administrative Department of the successor State including that of the petitioners. The contention of the petitioners is that their allocation to the successor State of Bihar could have affected their service conditions which would be in the teeth of the Section 73 of the Act, 2000 as the retirement age of the employee in the State of Bihar was 58 years. The same is, however, no longer tenable as the age of retirement of employees in both the successor States has been increased up to 60 years. The petitioners are still serving as per the contention of the learned counsel for the petitioners. Therefore, the petitioners have failed to make out a case for interference in the impugned notification allocating their services to the successor State. Accordingly, the writ petition is dismissed. Interim order dated 16.03.2005 also stands vacated.