

(2008) 01 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1666 of 2004

Harinandan Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Bihar Service Code, 1952 — Article 7

Citation : (2008) 56 BLJR 1486 : (2008) 2 JCR 702

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Sunil Kumar Sinha, for the Appellant; S. Ranjan, J.C. to G.P. II, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order, as contained in Memo No. 918 dated 23rd February, 2004, whereby the allotment of Quarter No. 7, PWD Colony, Circuit House Area, Jamshedpur made in favour of the petitioner has been cancelled and the same has been allotted to the Respondent No. 3.

2. The petitioner is an Assistant Engineer in the department of Public Works Department, Government of Jharkhand. While he was posted as Assistant Engineer, Monitoring, Road Circle, Jamshedpur, he was allotted Quarter No. 7, in PWD Colony, Circuit House Area, Jamshedpur by Memo No. 1392 dated 11th August, 1999.

3. In the year 2002, the petitioner's services were placed to the Industries Department vide Road Construction Department's Notification No. 5985 dated 31st December, 2002. The Industries Department by Notification No. 100 dated 10th February, 2003 transferred and posted the petitioner to Adityapur Industrial Area Development Authority (for short AIADA) with effect from 2nd January, 2003. After his transfer to AIADA, the petitioner requested for allowing him to

retain the said quarter. By Memo No. 86 dated 7th January, 2003, the Respondent No. 2 allowed him to continue in the said quarter on the same terms and conditions of allotment dated 11th August, 1999.

4. Suddenly the petitioner was informed that its allotment of the said quarter dated 7th January, 2003 has been cancelled and the same has been allotted to the Respondent No. 3 by Office Order No. 918 dated 23rd February, 2004.

5. It has been stated that Quarter No. 7, PWD Colony, Circuit House Area, Jamshedpur is a Pool Quarter meant for Gazetted Officers posted in Jamshedpur town. The petitioner was allotted the said quarter, as he was posted at Jamshedpur. The Respondent No. 3 was allotted a quarter in Jamshedpur town. But he has been favoured by allotting the said another quarter by the same impugned arbitrary order.

6. Two sets of counter affidavits have been filed; one on behalf of the State respondents and another on behalf of the Respondent No. 3.

7. The State respondents have contested the petitioner's claim, stating, inter alia, that the petitioner has suppressed the fact before the Department as also before this Court. This writ petition is not maintainable on that ground alone and is liable to be dismissed. The petitioner was allotted Quarter No. 7, in PWD Colony, Circuit House Area, Jamshedpur by order dated 11th August, 1999, when he was posted as Assistant Engineer, Monitoring, Road Circle, Jamshedpur. Later on, his services were placed at the disposal of the Industries Department by Notification dated 31st December, 2002. The Industries Department posted the petitioner as Assistant Engineer in AIADA. Thereafter, on 4th January, 2003, he applied for re-allotment of the quarter, stating that his headquarter is still at Jamshedpur.

8. On the basis of his representation, the said Quarter No. 7 was re-allotted by Memo No. 86 dated 7th January, 2003. The petitioner suppressed that he was posted at Adityapur, which is in Saraikela, Kharsawan district. The petitioner's headquarter was thus not in Jamshedpur. It has been stated that since the petitioner's headquarter is in different district, occupation of the said quarter by the petitioner is unauthorised in view of the provisions made in Appendix-8 Article VII of the Bihar Services Code.

9. After detection of the said fact, the petitioner's allotment has been cancelled by Memo No. 918 dated 23rd February, 2004. It has been stated that the petitioner has got no right to occupy the said quarter at Jamshedpur and there is no violation of any law in the said cancellation. Even the said allotment in the year 1999 was made with clear condition that whenever the quarter is required, the petitioner has to vacate the same at one week's notice and the respondents shall not be responsible for making alternative arrangement for his residence.

10. The petitioner now being posted at Adityapur under Saraikela-Kharsawan district, he cannot claim any right to continue in the said quarter at Jamshedpur

in East Singhbhum district. It is found that the Respondent No. 3 to whom the said quarter is allotted has any other quarter in Jamshedpur, the said order of allotment shall be cancelled. However, the petitioner has got no concern with the same and he is liable to vacate the quarter in which he is in unauthorised occupation.

11. The Respondent No. 3 in his separate counter affidavit, inter alia, stated that he is an Executive Engineer and he is entitled to get a superior quarter. He had come to know that Quarter No. 2, PWD Colony, Circuit House Area, was allotted to one Sri T. Soren, Chief Engineer, who retired long ago in 1999. He was given notice to vacate the said quarter, but he continued in possession of the same illegally. The Executive Engineer, Building Construction Division, Jamshedpur reported that the said quarter is vacant. The Respondent No. 3 had applied for allotment of the said Quarter No. 2. Instead of allotting the said Quarter No. 2 for which Respondent No. 3 is a genuine claimant. Quarter No. 7 of the PWD Colony, Circuit House Area, was allotted to the Respondent No. 3. He had never applied for the said Quarter No. 7. The said allotment of Quarter No. 7, which is still not vacant, has been deliberately made in the name of the Respondent No. 3 in order to accommodate and allowed the said Sri T. Soren to continue in Quarter No. 2. The Respondent No. 3 has denied other allegations.

12. I have heard learned Counsel for the parties and perused the relevant documents on record. It is an admitted fact that for the first time, the petitioner was allotted the said Quarter No. 7 in the year 1999 while he was posted as Assistant Engineer, Monitoring, Road Circle, Jamshedpur. In 2002, the petitioner's services were placed to the Industries Department. The Industries Department by Notification No. 100 dated 10th February, 2003 posted the petitioner to AIADA. The petitioner made representation for allowing him to continue in the said Quarter No. 7 on the ground that in spite of his transfer, his headquarter remained at Jamshedpur. On the said representation, the petitioner was allowed to continue in the said Quarter No. 7 on the same terms and conditions on which the allotment was made earlier in the year 1999. The AIADA is within the territorial jurisdiction of Saraikela-Kharsawan district, whereas Jamshedpur is in the district of East Singhbhum. The respondents have stated that on the wrong representation of the petitioner that his headquarter is still in Jamshedpur, he was allowed to continue in the said Quarter No. 7. When it was detected that his headquarter is in Saraikela-Kharsawan district, the impugned order was issued, cancelling the order of allotment of the said quarter in his favour.

13. Clear stand of the Respondent-State is that the re-allotment in favour of the petitioner was based on the said wrong representation. The allotment is contrary to the provisions of Appendix 8 Article VII of the Bihar Service Code and the petitioner's occupation in the said quarter is unauthorised. On perusal of the terms of allotment, it is evident that no permanent right to occupy the quarter was conferred on the petitioner and a clear clause was made for getting the

quarter vacated at one month's notice.

14. In view of the above discussion, the impugned cancellation order dated 23rd February, 2004 cannot be held arbitrary or illegal. No case could be made out by the petitioner, warranting interference in the impugned order by this Court in its writ jurisdiction. I, therefore, find no merit in this writ petition, which is, accordingly, dismissed. However, There is no order as to costs.