
(2020) 01 JH CK 0057

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 146 of 2017, I.A. No. 2727 of 2017

Haring Nath Dwivedi

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Citation : (2020) 01 JH CK 0057

Hon'ble Judges : H. C. Mishra, J;Deepak Roshan, J

Bench : Divison Bench

Advocate : Rajiv Ranjan, P.A.S. Pati, Ashish Kumar, Ashish Kr. Thakur, S.P. Roy, Ramit Satender, Abhay Mishra

Final Decision : Disposed Of

Judgement

1. Heard learned senior counsel for the appellant, learned counsels for the State of Jharkhand and the State of Bihar, as well as learned counsel for the Private Respondent No.10.

2. The appellant is aggrieved by the impugned Judgment dated 08.03.2017, passed by the Writ Court in W.P.(S) No. 4075 of 2007, whereby the writ application filed by the appellant writ petitioner for quashing the notification contained in memo dated 29.06.2007, whereby he was allocated the cadre of State of Bihar on the basis of mutual transfer with the respondent No.10, and for retaining his services in the cadre of the State of Jharkhand, has been dismissed by the Writ Court.

3. The facts of this case lie in a short compass. The appellant writ petitioner was appointed in the year 1990 on the post of District Fishery Officer. In the year 2000, he was given promotion to the post of Deputy Director, Fisheries. In the year 2000, the State of Bihar was bifurcated pursuant to the Bihar Reorganization Act 2000, and State of Jharkhand was created with effect from 15.11.2000. In the exercise of cadre re-allocation, the appellant, who was posted within the territory, now in the State of Bihar, was allocated the cadre of State of

Jharkhand, and accordingly, he gave his Joining in the State of Jharkhand in the month of July, 2006. Whereas the respondent No.10, who was also working on the post of Deputy Director Fisheries, and was posted within the territory of State of Jharkhand, was allocated the cadre of the State of Bihar. On 27.07.2006, the appellant and the respondent No.10 gave a joint application for mutual transfer of their cadre. Subsequently, the appellant learnt that due to the consent for mutual transfer given by him, he shall have to loose his seniority. Accordingly, he gave an application on 14.06.2007, withdrawing his consent unilaterally. It appears that his application, though was submitted to the respondent authorities in the State of Jharkhand on 14.06.2007 itself, but could not be sent for some reason or other to the State of Bihar well within time, where it was received only on 2.07.2007, but prior to that, on 29.06.2007 the order of mutual transfer was already issued, which the petitioner challenged by filing the writ application in this Court, in W.P.(S) No.4075 of 2007. Upon adjudication, the said application was dismissed by the Hon'ble Single Judge, holding inter alia, that since the application for the cadre transfer was filed jointly, the consent could not be withdrawn unilaterally, after passing of the impugned order (of transfer of the State cadre).

4. The learned senior counsel appearing for the appellant has submitted that the impugned Judgement passed by the Writ Court, cannot be sustained in the eyes of law, and has drawn our attention towards Judgement passed by the Division Bench of Patna High Court, in Indrajeet Kumar Arya Vs. The State of Bihar & Ors., (L.P.A. No.881 of 2010 decided on 09.09.2010), wherein where in a similar case, when the consent for transfer of the State cadre, was withdrawn unilaterally, and the writ application was dismissed on the same ground that the consent for mutual transfer could not be withdrawn unilaterally, the LPA Court of Patna High Court has held that in the facts of that case, the appellant of that case was fully justified in withdrawing the consent unilaterally, and in the concerned press communique for giving applications for mutual transfer of the State cadre, there was no provision / clause preventing any employee from withdrawing his consent for mutual transfer.

5. Learned senior counsel for the appellant has also drawn our attention towards the counter affidavit filed on behalf of the State of Jharkhand, wherein a letter dated 09.09.2019, issued by the Secretary to the State Government of Jharkhand, in Agriculture, Animal Husbandry and Cooperative Department, addressed to the Additional Chief Secretary of the State of Bihar, has been brought on record, informing that the State Government of Jharkhand wants to retain the services of the appellant in the State of Jharkhand itself. Learned senior counsel for the appellant placing reliance on this document submitted that it is a fit case in which the notification dated 29.06.2007 be quashed and the appellant be allowed to continue in the cadre of State of Jharkhand.

6. In view of letter dated 09.09.2019 brought on record, this Court by orders dated 27.11.2019 and 18.12.2019 sought the response of the State of Bihar, and

pursuant thereto, the State of Bihar has also filed a supplementary counter affidavit, stating that letter dated 09.09.2019, issued by the State of Jharkhand has been replied by the State of Bihar, vide letter dated 12.12.2019, stating that one post of Deputy Fisheries Director has been kept for the appellant, which is lying vacant for last twelve years in anticipation of his joining. The said letter dated 12.12.2019 has been brought on record through this supplementary counter affidavit.

7. The stands of the learned counsels for the respondents both the States, are in accordance with the counter affidavits filed by them, i.e., State of Jharkhand is willing to continue with the appellant in its cadre, whereas State of Bihar is also ready to accept the appellant, if the appellant joins in the State of Bihar, as one post of Deputy Fisheries Director is still lying vacant for last twelve years in anticipation of his joining.

8. Learned counsel for the private respondent however, submitted that in view of the mutual consent for transfer given by the appellant, he could not withdraw the same unilaterally, and there is no illegality in the impugned Judgement passed by the Writ Court.

9. Having heard learned counsels for the parties, and on perusal of record, we find that by the letter dated 09.09.2019, issued by the Secretary to the State Government of Jharkhand, in the concerned Department, the Additional Chief Secretary of the State of Bihar, was informed that the State Government of Jharkhand wants to retain the services of the appellant in the State of Jharkhand, keeping in view the shortage of the officers in the cadre, and the experience of the appellant and accordingly, sought for the consent of the State of Bihar for the Same. This letter, thus, clearly shows that the State of Jharkhand wishes to retain the services of both the officers, i.e., the appellant and the respondent No. 10, in the State of Jharkhand. In response thereto, the State of Bihar has issued the letter dated 12.12.2019, stating that one post of Deputy Fisheries Director is lying vacant for last twelve years in anticipation of the joining of the appellant.

10. In the backdrop of the aforesaid facts, brought on record during the pendency of this Letters Patent Appeal, we propose to dispose of this appeal without interfering with the impugned Judgement dated 08.03.2017, passed by the Writ Court in W.P.(S) No.4075 of 2007, directing both the respondents States to take a final decision afresh in the matter, keeping in view the withdrawal of consent by the appellant by his application dated 14.06.2007, which for no fault of the appellant was not sent to the State of Bihar, well within time. We wish to make it clear that any final decision in the matter shall not affect the rights of the respondent No.10 to continue in the cadre of the State of Jharkhand, as we are passing this order in view of the letter dated 09.09.2019, issued by the State of Jharkhand, showing its willingness to retain the services of the appellant in the State of Jharkhand, keeping in view of the shortage of the officers in the cadre, and the experience of the appellant, which shows that the State of Jharkhand

wishes to retain the services of both the officers, i.e., the appellant and the respondent No. 10, in the State of Jharkhand.

11. We, accordingly, direct the State of Bihar as well as State of Jharkhand to take a final decision in the matter afresh, in view of the observations of the Court as made above, and also taking into consideration the application of the appellant dated 14.06.2007 and the letter dated 09.09.2019, issued by the State of Jharkhand.

12. Till any final decision is taken by both the States, the appellant who is still working in the State of Jharkhand, shall continue to render his services in the State of Jharkhand.

13. This LPA is accordingly, disposed of with the directions and observations as above. Pending I.A. also stands disposed of.