
(2017) 03 JH CK 0009

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4075 of 2007

Haring Nath Dwivedi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Bihar Reorganization Act, 2000 — Section 72
Constitution of India, 1950 — Article 226

Citation : (2017) 2 JLJR 249

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. V.P. Singh, Sr. Advocate and Ms. Ruchi Rampuria, Advocate, for the Petitioner; Mr. Jayant Franklin Toppo, S.C. (L&C), for the Respondent Nos. 1 to 4; Mr. S.P. Roy, G.A. (Bihar) and Mr. Pankaj Kumar, JC. to G.A. (Bihar), for the Respondent Nos. 5 to 7; Mr. Abhay Kumar Mishra, and Mr. Bhola Nath Ojha, Advocates, for the Respondent No. 10

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has, inter alia, prayed for quashing the Notification contained in Memo dated 29.06.2007, whereby the services of the petitioner have been reallocated to the State of Bihar with the condition that he cannot claim his seniority in the cadre on the basis of the mutual transfer of cadre with the Respondent No. 10 being contrary to the letter dated 21.05.2005, issued by the respondents and has further prayed for direction to the respondents not to give effect of the Notification issued on 29.06.2007 till disposal of the writ application so far as it relates to petitioner and the respondent no. 10.

2. Sans details, the facts as averred in the writ application, is that in pursuance to the Advertisement published by the Bihar Public Service Commission in the year 1990 for the post of the District Fishery Officer, the petitioner being selected, was appointed on the said post. In the year 2000, the petitioner along with other eligible persons were considered for promotion and accordingly, he

was promoted to the post of the Deputy Director, Fishery. In view of the Bihar Re-organization Act, 2000, the petitioner has been finally allocated to the State of Jharkhand, hence, the petitioner put his joining in the State of Jharkhand in July, 2006. Since then, he has been working as Deputy Director, Fishery and while continuing, as such, the petitioner as well as the respondent no. 10 applied for mutual transfer of the cadre vide Annexure-1 to the writ petition. Since the petitioner, after going through the letter dated 21.05.2005 as contained in Annexure-2, was under the impression that in case of mutual transfer, his seniority would not be affected, but, after coming to know about losing seniority, the petitioner filed one application vide letter dated 14.06.2007 before the respondents through proper channel regarding withdrawal of his consent, which was given earlier on the application dated 27.07.2006, as evident from Annexure-4 to the writ petition. A Notification dated 29.06.2007 was issued, whereby the services of the petitioner has been re-allocated to the State of Bihar and the services of the respondent no. 10 has been reallocated to the State of Jharkhand as per the Annexure-6 to the writ petition.

3. Learned senior counsel for the petitioner has submitted with vehemence that the respondents while issuing the impugned Notification dated 29.06.2007, have not taken into account that while giving consent for mutual transfer of the cadre, there was no any condition with regard to loss of seniority, therefore, the impugned Notification is contrary to the letter dated 21.05.2005, hence not sustainable in the eyes of law. Learned senior counsel further submits that the respondents while issuing the impugned Notification dated 29.06.2007 have not taken into consideration the application of the petitioner dated 14.06.2007 with regard to withdrawal of his consent in terms of the order issued by the respondents dated 14.02.2007, whereby the petitioner came to know that in case of mutual transfer of the cadre, he cannot claim seniority. Learned senior counsel for the petitioner during course of hearing has referred to the Notification dated 22.06.2013 (Annexure-15) and the Notification dated 30.06.2014 (Annexure-16) of I.A. No. 3808 of 2014, wherein the name of the petitioner has been placed at Serial No. 1 and the name of the respondent no. 10 has been placed at Serial No. 3. Learned senior counsel has also referred to the seniority list of the State of Jharkhand, dated 26.02.2014, wherein, the name of the petitioner and the name of the respondent no. 10 have been placed at Serial nos. 1 and 3 respectively. Again the learned senior counsel for the petitioner has drawn the attention of the Court to the notification dated 16.04.2012 (Annexure-18) pertaining to placement of the petitioner and the respondent no. 10 and also Annexure-19, dated 13.07.2013 pertaining to pay fixation. Learned senior counsel for the petitioner has also referred to Annexure-20 of the said interlocutory application, where the State of Jharkhand vide letter dated 16.01.2012, has intimated the State of Bihar, the reasons for the continuance of the petitioner in the State of Jharkhand. Learned senior counsel has also referred to the Departmental Promotion Committee held on 01.07.2014 (Annexure-23 of the I.A. No. 6286 of 2014), when the case of the petitioner is within the zone of

consideration. Learned senior counsel has also referred to the Memo dated 29.06.2010 (Annexure-28 of the supplementary affidavit dated 17.12.2014), where the 31.08.2010 was the cut off date for inter-State transfer. Learned senior counsel by referring to the aforesaid documents has strenuously urged that the petitioner is entitled to the reliefs sought for in the writ application.

4. A counter affidavit has been filed on behalf of the respondent no. 10, controverting the averments made in the writ application. It has been, inter alia, submitted that though the application dated 14.06.2007 vide Annexure-4 was written 15 days prior to issuance of Annexure-6, but as a matter of fact, the same was received in the office of the Chief Secretary, Government of Bihar on 02.07.2007 i.e. after the final order of allotment of cadre was issued as is evident from the receipt dated 02.07.2007. A joint petition for mutual consent was made by the petitioner and the respondent no. 10 as back as on 27.07.2006 and the petitioner has changed his mind after one year, when both the State Governments have sent their consent and the cadre has finally been allocated. It has further been stated that the Secretary to the Government, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand issued Memo No. 5460, dated 15.10.2008 with certain guidelines in relation to allocation of cadre after mutual consent, where it has been mentioned that only within four months of final cadre division, the application of the petitioner will be entertained and further after application is forwarded after recommendation to the State of Bihar then the withdrawal from mutual consent will not be entertained and the decision dated-15.10.2008 has been communicated by the Director, Fisheries, Jharkhand, Ranchi to all the Executive Engineers, Fisheries Directorate, Ranchi, Deputy Director, Fisheries, Ranchi/Hazaribagh. It has further been submitted that there are only three posts of the Deputy Director and the Joint Directors and, as such, no other persons can be adjusted in Jharkhand cadre.

5. Learned counsel for the Respondent No. 10 by referring to Annexure-B of the counter affidavit of the State of Bihar, has submitted that the letter dated 27.09.2006, clearly indicates that the State of Bihar asked for the consent and after obtaining the consent, the impugned order has been passed. Learned counsel has also referred to the counter affidavit to I.A. No. 1387 of 2013 of the Respondent No. 10, wherein, in paragraph 4 of the said affidavit, the names of the persons, who have been transferred from Bihar to Jharkhand, have been mentioned. Learned counsel for the Respondent No. 10 has also referred to the order dated 10.12.2007, passed in C.W.J.C. No. 10928 of 2006 (Annexure-D of the counter affidavit, filed by the respondent nos. 5 and 6), where the Hon''ble Court did not interfere in the unilateral withdrawal of petition for transfer.

6. A counter affidavit has been filed by the Respondent nos. 5 to 7-State of Bihar controverting the averments made in the writ petition , wherein, it has been submitted that after observing necessary formalities and obtaining the permission from the State Government, the Home (Special) Department vide

notification dated 29.06.2007, issued order for inter State transfer of the petitioner on mutual basis with respondent no. 10 and the letter dated 14.06.2007 (Annexure-4 to the writ petition) has not been received in the Department. Furthermore, there is no provision for withdrawal of the consent unilaterally after submitting joint representation for inter State transfer on mutual basis. In the instant case, the petitioner has submitted joint representation with Respondent No. 10 for their inter State transfer, but the request for withdrawal of the representation has been only made by the petitioner. The Hon"ble Patna High Court in C.W.J.C. No. 10928 of 2006 has observed that the joint representation for mutual transfer could only be withdrawn jointly. Unilateral withdrawal by the petitioner was of no effect, as per Annexure-D to the counter affidavit.

7. A counter affidavit has been filed on behalf of the Respondent nos. 1 to 4-State of Jharkhand, wherein, the maintainability of the writ petition has been challenged on the ground that the Notification dated 29.06.2007 of the State of Bihar (Annexure-6) has been challenged. It has further been submitted that although the petitioner has himself accepted as mentioned in paragraph 12 and 13 of the writ petition the fact that it was known to him on 14.02.2007 that while considering the application for mutual transfer, the seniority is effected, but he did not take any action for cancellation of application for mutual transfer, on the contrary, it is apparent that for the reasons best known to him, he submitted his representation for withdrawal of the application for mutual transfer after issuance of the impugned order dated 29.06.2007, since the application was received in the office of the Secretary, Animal Husbandry and Fisheries Department, Government of Jharkhand, Ranchi on 02.07.2007.

8. After hearing the learned counsel for the respective parties and on perusal of the records, I am of the considered view that the petitioner has not been able to make out a case for interference due to the following facts, reasons and judicial pronouncements.

(i) In the case in hand, the petitioner has sought for quashing the order dated 29.06.2007, pertaining to his allotment of cadre of the State of Bihar and the Respondent No. 10 to the State of Jharkhand on the basis of application for mutual transfer of cadre. The main grounds for challenging the impugned order is that in case of mutual transfer, the petitioner will be losing his seniority but the said issue is now no more res integra, as it has already been decided by the Hon"ble Division Bench of this Court rendered in the case of State of Bihar v. Ravindra Prasad Singh & Ors. reported in 2014 (3) JLJR 76. The order passed by the Division Bench in L.P.A. No. 511 of 2009 dated 22.04.2014 leaves no room for ambiguity or doubt as the employees, who have opted for mutual transfer will have to lose their seniority since they are not protected either under proviso of Section 73 or any other provisions of law. There cannot be any distinction between an employee, who had filed an application for mutual transfer before any date or thereafter, a person who had opted for mutual transfer will have to

be treated as one class and there cannot be a sub-class of employees, who have opted for mutual transfer prior to 2006 or after 2006.

(ii) In pursuance to the Scheme for cadre allocation dated 21.05.2005 (Annexure-2 to the writ application), the petitioner and the respondent no. 10 have filed their joint application for mutual cadre allocation, which has been forwarded by the Secretary, Animal Husbandry and Fisheries Department, Government of Bihar vide letter dated 27.07.2006 for consent wherein, the Secretary has written that an application, which has been received for mutual cadre allocation. Consent of the State of Jharkhand, is required and the same has also been accorded by the State of Jharkhand. After the consent given by the State of Jharkhand, it has been accepted by the State of Bihar and the impugned order has been passed and a condition has been mentioned that after mutual cadre allocation, seniority will not be given. The unilateral withdrawal of mutual cadre application has been filed by the petitioner after passing of the impugned order, which is not tenable in the eyes of law.

(iii) After recommendation made by the State of Bihar, no application whatsoever will be entertained for withdrawal of mutual application even jointly or unilaterally, as evident from the letter dated 15.10.2008. Therefore, as per the settled proposition of law, the application for mutual cadre allocation cannot be withdrawn unilaterally. Moreover, the issue raised in the case, has already been decided by the decision rendered in the case of Ravindra Prasad Singh & Ors. (supra). As per the aforesaid settled proposition of law, the protection granted under Section 72 of the Bihar Reorganization Act, 2000 does not apply in the case, when the transfer is being made on the basis of the mutual cadre allocation.

9. In view of the reasons stated in the foregoing paragraphs, this Court is not inclined to accede to the prayer of the petitioner for quashing of the impugned Notification dated 29.06.2007.

Accordingly, the writ petition sans merit, is hereby dismissed.