
(2001) 07 JH CK 0084
In the Jharkhand High Court
Case No : CWJC No. 1384 of 2001

Jai Shankar Bhagat

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 72(1)

Citation : (2001) 49 BLJR 1658

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Prasad and Sunil Kumar, for the Appellant; K.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

1. In this writ application the petitioner has prayed for quashing the office order dated 27.3.2001 issued by respondent No. 3, Secretary, Department of Agriculture, Co-operative and Sugarcane Development, Govt. of Jharkhand, Ranchi whereby the petitioner has been directed to go back to the State of Bihar as there is no post of Joint Director, Agriculture-cum-Controller, weight and Measures in the State of Jharkhand.

2. The petitioner who is a permanent resident of the district of Gumla within the State of Jharkhand, was serving as Joint Director, Agriculture-cum-Controller, Weights and Measures, Agriculture Deptt. Patna in the erstwhile State of Bihar. The Central Government, in purported exercise of powers u/s 72(1) of the Bihar Re-Organisation Act, 2000, issued a list of officers of various departments including Agriculture department and directed them to discharge their duties in such capacity in the State of Jharkhand and they shall continue to work as such in the State of Jharkhand after 15th November, 2000. Pursuant to that order of the Central Government the Agriculture Department, Government of Bihar issued an order dated 10.11.2000 under the signature of Director, Agriculture Department, directing that the petitioner should be relieved from Patna for the

purpose of joining Jharkhand State by 14.11.2000. The petitioner was, accordingly, relieved and he assumed charge in the State of Jharkhand on 14.11.2000 as Joint Director, Agriculture-cum-Controller, Weights and Measures. However, suddenly respondent No. 3. Director, Agriculture issued the impugned order dated 27.3.2001 whereby while terming the petitioner's joining directly as Joint Director, Agriculture Department as improper, directed for the return of the services of the petitioner to the Government of Bihar. The petitioner has challenged the impugned order as being illegal and wholly without jurisdiction.

3. A counter affidavit has been filed by the respondents stating, inter alia, that the petitioner was not posted against the post of Joint Director-cum-Controller Weights and Measures, Government of Jharkhand, Ranchi. Hence the order dated 10.11.2000 issued by the Government of Bihar is neither procedurally admitted nor legally enforced by the Department of Agriculture. Government of Jharkhand. It is stated that the petitioner was working as Joint Director-cum-Controller, Weights and Measures, Government of Bihar which was the only post in the State of Bihar and the same has been retained by the State of Bihar. However, since the behaviour of the petitioner is deplorable and unbecoming of an officer, the department of Agriculture, Government of Jharkhand decided to return the service of the petitioner to the State of Bihar.

4. After hearing the counsel for the parties the only question which falls for consideration is as to whether the impugned order issued by the Director, department of Agriculture. Government of Jharkhand transferring the services of the petitioner to the State of Bihar is without jurisdiction.

5. The Bihar Re-Organisation Act, 2000 has been enacted by the Parliament for the re-organisation of the State of Bihar and formation of a new State of Jharkhand. By virtue of the said Act, State of Jharkhand came into existence with effect from 15.11.2000. Section 72 of the said Act makes provision relating to the services in the State of Bihar and Jharkhand. For better appreciation Section 72 of the said Act is quoted hereinbelow which reads as under :

"72. Provisions relating to services in Bihar and Jharkhand.--(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Bihar, shall on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand :

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the Successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

6. From bare perusal of the aforesaid section it is manifest that the Central Government is empowered under Sub-section (1) of Section 72 to direct, by general or special order, any officer serving in the State of Bihar before the appointed day, to serve in the State of Jharkhand. Sub-section (2) provides that the Central Government, after the appointed day, shall finally determine and allot the services of the persons who were serving the State of Jharkhand.

7. In exercise of powers u/s 72(1) of the Act, the Central Government issued an order relating to the officers who are to serve in the State of Jharkhand. A copy of the order has been annexed as Annexure 1 to the writ application. The name of the petitioner appears in the said list who has been sent to the State of Jharkhand with the post of Joint Director, Agriculture-cum-Controller, Agriculture Department. Pursuant to that the State of Bihar issued relieving order on 10.11.2000. The office order dated 10.11.2000 is worth to be quoted hereinbelow :--

fcgkj dk-vk-1@,-th-&62@2000 2136@?r iVuk fnukad 10-11-2000 vkns"k

x`g fo"ks"k foHkkx] iVuk ds i=kad 1566 fnukad 8-11-2000 }kjk m?kiorhZ >kj[kaM ds fy, oxhZ?r ?f"k foHkkx esa dk;Zjr fuEufyf[kr inkf/kdkfj;ksa dk muds in l`ftr m?kiorhZ >kj[kaM jkT; esa fnukad 14-1-2000 rd {ksf=; fodkl vk;q? dk;kZy;] jk?ph esa ;ksxnku nsus gsrq fojfer fd;k tkrk gS %&

?e la- inkf/kdkjh dk uke inuke osrueku

1- Jh t;"kadj Hkxr la;q? ?f"k funs"kd] ekirkSy ?f"k foHkkx 4100&5300@& ? viqujhf{kr?

2- Jh Ihrkjk la;q? ?f"k eaMy funs"kd ?f"k foHkkx 3700&5000@& ?viqujhf{kr?

2- fu;ekuqlkj bUgsa vfxze osru rFkk vfxze ;k=k Hk?kk vuqHkx gksxk A

g- vLi"V 9-11-00 ?tS-ch- rqlf? funs"kd] ?f"k fcgkj] iVuk

8. From the aforesaid order it is clear that the petitioner was relieved along with his post for joining in the State of Jharkhand. The petitioner, accordingly, joined in the State of Jharkhand on 14.11.2000. The said fact has been admitted by the respondents in the impugned order that the petitioner was relieved along with his post by the State of Bihar for joining as Joins: Director, Agriculture in the State of Jharkhand. It has not been disputed by the respondents that after the petitioner assumed charge of Joint Director in the State of Jharkhand, the charge report was forwarded to the Regional Development Commissioner, Ranchi and the Agriculture Production Commissioner, Bihar. It is also not disputed that till date no one has been posted as Director, Agriculture, Government of Jharkhand and

the said post is lying vacant since the day when the State of Jharkhand came into existence.

9. As noticed above, under the Act the Central Government is the competent authority to take decision in the matter, it was pursuant to that order issued by the Central Government u/s 72 of the Act, the petitioner admittedly joined as Joint Director. Agriculture in the State of Jharkhand which was confirmed by the State of Bihar also. In such circumstance, I am of the opinion that the State of Jharkhand has no jurisdiction to issue the impugned order sending back the services of the petitioner to the State of Bihar. The impugned order is wholly illegal and without jurisdiction. The stand of the respondents State of Jharkhand that there is no post of Joint Director, Agriculture as the said post was retained by the State of Bihar, is misconceived and that cannot be a ground for transferring the services of the petitioner to the State of Bihar.

10. This writ application is, therefore, allowed and the impugned order as contained in Annexure 5 to the writ application is quashed. It is directed that the petitioner shall continue to serve in the State of Jharkhand till the matter of allocation is finally determined by the Central Government u/s 72 of the said Act.

11. Writ allowed.