
(2012) 05 PAT CK 0038

In the Patna High Court

Case No : Letters Patent Appeal No. 1660 of 2010 in Civil Writ Jurisdiction Case No. 5488 of 2009

Kailash Prasad Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 71, 72, 72(1), 72(2), 72(3)

Citation : (2012) 3 PLJR 466

Hon'ble Judges : Vikash Jain Cav, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Chitranjan Sinha and Mr. Satish Chandra Mishra, for the Appellant; Binod Kanth for Respondent No. 11, Mr. Dhananjay Kumar, Advocate, Mr. Rakesh Kumar Singh CGC for the Union of India, Mr. Dhruv Mukherjee, advocate for the State of Jharkhand and Mr. Neeraj Kumar, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Shiva Kirti Singh

1. Parties have been heard at length for the purpose of disposal of this appeal at the stage of admission itself. This Letters Patent Appeal has been preferred by the writ petitioner against dismissal of CWJC No. 5488 of 2009 by judgement and order dated 4-8-2010 passed by a learned Single Judge of this court. Initially the prayer of the writ petitioner was for quashing of order contained in memo No. 886 dated 13-4-2009 whereby the State Government decided interse seniority and held the respondent No.11, Ram Babu Chaudhary senior to the petitioner and for quashing of decision of the Central Government vide letter dated 22-8-2006 whereby allocation of respondent No. 11 to the State of Jharkhand was reversed and he was allocated to the State of Bihar. Later, through an Interlocutory application the writ petitioner sought another relief for quashing of notification dated 3-3-2010 whereby the State Government gave additional charge of Chief Inspector of Boilers to respondent No. 11.

2. The main issue raised in this appeal is whether the Central Government had power or not to review the final allocation of services of respondent No.11 and thereby cancel his allocation to Jharkhand and allocate him to State of Bihar.

3. According to learned counsel for the appellant, after having completed the procedure of final allocation in terms of Section 72 of the Bihar Reorganization Act, 2000 (hereinafter referred to as the "Act") the Central Government became functus officio in this matter and had no authority under the Act to review its decision for final allocation of services of respondent No.11 to Jharkhand. On the other hand, learned counsel for respondent No.11 has submitted that because the respondent No.11 had filed a writ petition against the provisional allocation to State of Jharkhand and the said representation had remained pending hence, there was no proper final allocation in case of this respondent and the Central Government rightly exercised its power to consider the representation filed against provisional allocation. In the alternative, it was also submitted on behalf of respondent No.11 that provisions of Section 76 of the Act empower the Central Government to give all such directions to Government of Bihar and Jharkhand as may be necessary for the purpose of giving effect to the provisions of Part VIII of the Act which also includes Section 72. Thus, it is the contention of respondent No.11 that power of review is available to the Central Government implicitly or impliedly by virtue of Section 76 of the Act. In reply the stand of the appellant is that representation of respondent No.11 had already been considered by the competent authorities including the Central Government and thereafter decision was taken to finally allocate him to State of Jharkhand. Therefore, the Central Government had become functus officio and had no power to review such decision within the four corners of the Act. According to learned counsel for the appellant Section 76 contains only supplemental and ancillary powers to ensure compliance or for giving effect to the provisions in Part VIII of the Act which include Section 71 to 75; it does not vest substantial power of review so as to reverse the decision already taken as per foregoing provisions in Part VIII of the Act.

4. For the purpose of appreciating rival contentions some relevant facts need to be noticed in brief.

5. Petitioner as well as respondent No.11 were holding the post of Inspector of Boilers in the department of Labour Employment and Training, Government of Bihar in the erstwhile State of Bihar which was reorganized under the Act w.e.f. 15-11-2000 resulting in successor States of Bihar and Jharkhand. On the appointed date, i.e., 15-11-2000, the appellant was posted and working in the State of Jharkhand on the post of Inspector of Boilers and respondent No.11 was working in the successor State of Bihar as Incharge Chief Inspector of Boilers. For giving effect to provisions in Part VIII of the Act options were invited from the members of various services of the erstwhile State of Bihar for the purpose of their final allocation to either of the two successor States. Respondent No.11 opted for the State of Jharkhand. This, as per writ court, was probably because

only one post of Chief Inspector of Boilers, then available, was located at Dhanbad in the State of Jharkhand. On the other hand the appellant opted for the State of Bihar.

6. There is no dispute that in the erstwhile State of Bihar, on all counts respondent No.11 being appointed in 1983 was senior to the appellant who was appointed in the same service after 14 years, in 1997. On the basis of option, service of respondent No.11 was provisionally allocated to State of Jharkhand by notification dated 28-6-2002. Thereafter on 22-7-2002 he made a representation before the Central Government against his tentative allocation by raising medical grounds that he was allergic to coal, dust and that weather in Jharkhand State was not suitable for him. Respondent No.11 continued in the successor State of Bihar and was made Incharge Chief Inspector of Boilers on 16-10-2004. Notwithstanding his representation on medical grounds, he was finally allocated to State of Jharkhand on 23-2-2005 and vide order dated 23-7-2005 he was relieved for joining at Jharkhand. After joining, respondent No.11 filed CWJC No. 4325/2005 for challenging the order finally allocating him to State of Jharkhand but that writ petition could not be decided on merits because in the meantime by the impugned letter dated 22-8-2006 issued by the Deputy Secretary, Government of India the cadre allocation of respondent No.11 was reviewed and he was allocated to State of Bihar. That writ petition was disposed of because Jharkhand State agreed to relieve the respondent No.11 in compliance of order dated 22-8-2006. Respondent No.11 was relieved by order dated 14-03-2007 and joined in the State of Bihar.

7. The appellant objected to revision of final allocation of respondent No.11 and made representation to the Secretary, Government of India, Ministry of Personnel, Public Grievances and Pension on 14-09-2006 and again on 04-12-2007 and requested for recall of order dated 22-08-2006. Thereafter the appellant filed CWJC No. 4284 of 2007 for quashing of the order dated 22-08-2006 with an alternative prayer that if respondent No.11 is allowed to remain in State of Bihar he should be placed at the bottom of seniority list on the principle available in the case of transfer of cadre on request. The aforesaid writ petition was disposed of on 16-07-2007 with a direction to concerned authorities to dispose of the pending representation of the appellant within three months and till disposal of the same, status quo as existing on that date was to be maintained. The appellant at the relevant time was working as Incharge, Chief Inspector of Boilers, Bihar because such a post had been created in the successor State of Bihar also in the year 2002. When the representation of the appellant was not disposed of within three months respondent No.11 filed a contempt petition and thereafter the appellant's representations were rejected by impugned order dated 13-04-2009 wherein it was also held that respondent No.11 shall be senior to the appellant.

8. The secondary issue of seniority has not been agitated before us. Hence, this issue has to abide by the judgment of the writ court which has held that final

allocation of respondent No.11 could be legally reviewed by the Central Government and that in the successor State of Bihar respondent No.11 shall rank senior to the appellant as per his status in service under the erstwhile State of Bihar.

9. The main issue falling for determination in this appeal is whether the Central Government had power to review the final allocation of respondent No.11 to State of Jharkhand and to change it to State of Bihar.

10. Learned counsel for the appellant has placed strong reliance on a Division Bench judgement of Uttarakhand High Court in the case of M. C. Joshi & Ors. Vs. State of Uttarakhand & Ors (writ petition No. 79/2008) decided on 26-07-2010. In that case Sections 73 and 77 of U. P. Reorganization Act, which are similar to Sections 72 and 76 of the Act, fell for consideration in the context of requests for transfer made by employees who had been finally allocated to one or the other successor States by Central Government. The Division Bench held that the power vested in the Central Government under Part VIII of the Reorganization Act stood exhausted after the Central Government issued the final allocation lists. The court further held that the Central Government must be deemed to have been rendered functus officio insofar as the allocation of employees is concerned. It was in the context of similar provisions in Part VIII of the UP Reorganization Act, 2000 that the Division Bench came to the aforesaid opinion on the reasoning that having discharged the responsibilities vested in the Central Government, it had no further authority, even on its own, to alter the final allocation of the employees. Further reference to the Central Government, as was done in that case, was held to be misconceived.

11. On going through the reasonings of the Division Bench of Uttarakhand High Court in the aforesaid case, we find ourselves in respectful agreement. There can be no two views on the proposition that a statutory authority has to act within the parameters set up by the Statute. The words "final allocation" in sub-section (2) of Section 72 when contrasted with the words -"provisionally continue to serve" or the words -"to serve provisionally" in Subsection (1) of Section 72 make it amply clear that the Act in clear terms attaches finality to allotments made by the Central Government in sub-section (2) of Section 72. After final allocation or allotment the consequences have to be as per sub-section (3) of Section 72 which provides that every person subject to final allotment, if he is not already serving in the allotted services of the State, shall be made available for serving in the concerned successor State from a determined date.

12. For ready reference Section 72 is extracted herein below:-

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.

13. The only provision which gives a semblance of further power in the Central Government is Section 76. This section reads as follows:-

76. Power of Central Government to give directions.- The Central Government may give such directions to the State Government of Bihar and the State Government of Jharkhand as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions

14. The wordings of Section 76 are clear and they give power to the Central Government only to give directions to the State Government of Bihar and Jharkhand, whenever it may appear necessary, for the purpose of giving effect to the earlier provisions of Part VIII of the Act. Clearly, such power is only a supplemental power and not a substantive power of reviewing final allocation made u/s 72 of the Act.

15. In view of discussions made above, it has to be held that the Central Government has no further role in the matter of allocation of cadre after it has made final allotments as per provisions in Section 72 of the Act. Thereafter, in such matters the Central Government is rendered functus officio.

16. An argument advanced on behalf of respondent No.11 remains to be considered. According to learned counsel for respondent No.11 a different view from that of Uttrakhand High Court in the judgement noticed above is required to be taken in this case because respondent No.11 had faced hardship and had filed representation against provisional allotment to the State of Jharkhand much before he was finally allotted to that State. According to learned counsel, in such a situation, it was legal obligation of the Central Government to dispose of the said representation one way or the other and in so doing it could very well allow the representation as was done in this case. A perusal of judgement under appeal shows that at page 13 of the order the learned Single Judge agreed with

this submission for coming to the conclusion that "since respondent No.11 had not represented against the final allocation of cadre, rather against tentative allocation, the Central Government has rightly considered and rectified the cadre allocation in the final allocation order. Power of correction being inherent under the Act with the Central Government, the competence of Central Government cannot be questioned". Such a view if based on undisputed facts may not be doubted, even if Central Government technically become functus officio if it had actually not considered the representation of respondent No.11 and if it had allowed the representation belatedly even after making final allocation, this court in exercise of writ jurisdiction could have been persuaded not to interfere on the principle that this court should not perpetuate an illegality and should not interfere with a wrong order if by that order another wrong has been undone. With this in mind, we applied our mind to the relevant facts and on going through the documents annexed as annexures-34 and 35 to the supplementary affidavit on behalf of appellant it is apparent from letter of the Minister of State, Personnel, Public Grievances, Pension and Parliamentary Affairs, Government of India, dated 14-09-2005 addressed to a Member of Parliament, Shri Ram Kripal Yadav that the request of respondent No.11 had been examined in the Ministry and it was not found possible to revise his allocation as it was beyond the relevant policy. Same facts also appear from further orders and note sheets in annexure-35 obtained under the Right to Information Act. Requests of several other Members of Parliament were not acceded to in 2005 itself, as appears from annexure-34. But it appears from annexure-35, particularly, from the page containing notes after 24-7-2006 that department of Personnel and Training constituted a Committee under the Chairmanship of Additional Secretary (P) to review the VIP cases pertaining to Bihar and Jharkhand and M.P/ Chhatisgarh. In respect of respondent No.11 the said Committee consisting of officials of Central Government noticed rejection of VIP requests earlier but recommended that his representation may be considered on medical grounds and on that ground by way of review a decision was taken to allocate respondent No.11 to Bihar.

17. Learned counsel for the appellant also referred to records of connected LPA No. 716/2009 which was preferred by respondent No.11 against an interim order passed in CWJC No. 5488/2009 (from which this appeal also arises). A rejoinder of the respondent No.11 in that appeal, to I.A. No. 3418/2009 filed by the appellant shows that as many as ten documents were annexed to the rejoinder. They include as annexure-2 and annexure-3 the entire copy of writ petition bearing CWJC No. 4325/2005 preferred by the respondent No.11 earlier and counter affidavit filed on behalf of Chairman, State Advisory Committee. In paragraphs 9 to 12 of that writ petition respondent No.11 pleaded about his representation whereby in fact he had reversed his option after tentative allotment and a copy of his representation against tentative allotment was made an annexure as per statements in paragraph 11. In paragraph 12 he pleaded that without giving any consideration to his representation it seems to have been rejected/ turned down without giving any reason and information. In paragraph

14 to the counter affidavit filed on behalf of respondent No.3, the Chairman, State Advisory Committee it was stated inter alia that petitioner had represented against his Jharkhand allocation. The original representation along with related papers had been sent to Government of India for final decision and orders. It was also stated that there was no such material in the representation which could justify his consideration as a special case. Paragraph 15 of the counter affidavit contains statements to the effect that respondent No.11 was allotted to State of Jharkhand on his option; on representation stage he wanted allocation to Bihar instead but reserved category wise he could be allocated to Jharkhand only. Paragraph 14 sub-paragraph (ii) of the counter affidavit clearly admits that representation of respondent No.11 had been received, its contents were noted including the medical ground but after considering everything no favourable recommendation could be made in his favour by the State Advisory Committee in its meeting held on 9-8-04 and his case was recommended for final allocation to Jharkhand.

18. On consideration of all the materials noted above, we are of the view that respondent No.11's representation of 2002 had been considered by the concerned authorities including the State Advisory Committee and thereafter he was finally allotted to State of Jharkhand. In the scheme of things there is also a presumption that all the applications against tentative allocation had been taken into consideration before decision in respect of final allocation by the competent authority, the Central Government. The facts support the aforesaid presumption. The scheme of the Act did not require communication of outcome of the representation to individuals nor revised options were bound to be respected. Hence, merely because the outcome of the representation was not separately recorded and communicated earlier to publication of final allotment list, it cannot justify a presumption that representation of respondent No.11 remained pending and that vitiated the decision taken by the Central Government for final allocation of respondent No.11 to State of Jharkhand. From annexures 34 and 35 it is obvious that even subsequently representation of respondent No.11 had been considered and rejected even after recommendation made by many VIPs including the Members of Parliament but for some reason all the earlier decisions were reviewed by the Central Government only because of recommendations made by VIPs which were considered by a Committee of officials of the Central Government. This procedure, in our view, was not for advancing the cause of justice but for some other purpose and in law the Central Government had become functus officio in the matter. It is not a case of apparent injustice done by the Central Government earlier which has subsequently been rectified and, therefore, this court cannot ignore the illegality in the impugned decisions taken by the Central Government without any statutory power of review under the Act.

19. Before parting with the matter, we deem it fit to record that we have looked into the medical grounds raised by the respondent No.11 for allowing his claim for allocation to successor State of Bihar in place of Jharkhand. At that time the said respondent was posted in Bihar itself and not in Jharkhand, he had no

opportunity to experience the feared ill consequences of climate in Jharkhand and most importantly only recently he had exercised option for Jharkhand. We are unable to see much merit in the so called representation of respondent No.11 and, particularly, medical grounds raised therein just after option, and it gained acceptance only because case of respondent No.11 was found to be based upon VIP recommendations and was, therefore, dealt with by a so called Committee specially constituted for such cases.

20. We also see no merit in the submission advanced on behalf of respondent No.11 that his old writ petitions pending for service benefits or seniority would be adversely affected by his allocation to Jharkhand. Whatever benefits he is found entitled to in law cannot be refused to him on the ground of such allocation alone. Such subsequent developments in service career will affect everybody in the like manner and no particular impact of allotment only in respect of respondent No.11 can be visualized. Such submission is, therefore, found to be without any merit. For the aforesaid reasons, the appeal is allowed and the order under appeal is set aside. As a result the writ petition would stand allowed. The decision of the Central Government reviewing the allocation of respondent No.11 and allocating him from the State of Jharkhand to State of Bihar vide order dated 22-8-2006 is quashed. Respondent No.11 shall be treated to be validly allotted to the State of Jharkhand as per earlier decision of the Central Government. He should be relieved by the State of Bihar for joining the State of Jharkhand without any delay and in any case within two months. The service rendered by respondent No.11 in the successor State of Bihar on account of order of the Central Government dated 22-8-2006 which has been quashed shall, in the interest of justice, be treated as valid service for all practical purposes so that he may not lose continuity of service on his rejoining the State of Jharkhand on account of this order.

In the facts of the case, there shall be no order as to costs.