

(2011) 07 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1001 of 2010

Kamal Prasad and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 74

Citation : (2011) 4 JCR 314

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—About 160 persons including the petitioners having degree of Civil Engineering were appointed in the year 1980-81 on the post of Junior Engineer on daily wages. They went on discharging their duties for number of years. In the year 1985, an advertisement was issued by the Bihar Public Service Commission for appointment of Assistant Engineer (Civil) in the Road Construction Department. Large number of candidates including these petitioners applied for. On being selected, large number of persons were appointed in the year 1987 and then in the year 1988 but the petitioners could not be selected for appointment. However on 16.6.1987, 200 posts were created in the Rural Development Department to carry out various programmes of the State Government under N.R.E.P. so that Assistant Engineer, working on daily wages of Junior Engineer be engaged. Accordingly, the petitioners and others who were working from before on daily wages were appointed on ad hoc basis for six months. Subsequently, the period for ad hoc appointment was extended for another six months. In spite of that, petitioners went on holding the posts and at the time of bifurcation of the State of Bihar, the petitioners were posted in the State of Jharkhand and as such, by virtue of the provision of the Bihar Reorganization Act, petitioners were allowed to continue to hold the posts in the State of Jharkhand.

2. But by the impugned order dated 5.3.2010 as contained in Annexure 1, services of the petitioners were repatriated to the State of Bihar on the ground that they have not been allotted cadre of Jharkhand permanently and that their appointments were not legal. In consequence of the said order, another order was passed on 6.3.2010 as contained in Annexure 1/1, whereby the petitioners were relieved for giving joining to Road Construction Department, Bihar. Patna. The said orders have been challenged to be bad.

3. Learned counsel appearing for the petitioners submits that the State Government does not have any power under the provision of the Bihar Reorganization Act to take unilateral decision to repatriate the service from one successor State to another successor State which proposition of law has been laid down in a case of Ram Swarath Prasad v. State of Jharkhand and another, 2002 (1) JCR 106 (Jhr).

4. Almost in a similar situation, this Court in the aforesaid case by taking notice of the provision of Sections 72 and 74 of the Bihar Reorganization Act did hold "there is no other provision under the Bihar Reorganization Act, 2000 which empowers to newly created State of Jharkhand to send back the services of those officers who shall be deemed to continue in the State of Jharkhand till cadre division is finalized by the Central Government."

5. In view of the said proposition, the impugned orders dated 5.3.2010 and 6.3.2010 as contained in Annexures 1 and 1/1 are fit to be set aside and accordingly, those orders are set aside.

6. In the result, this application is allowed. Application allowed.