
(2006) 08 PAT CK 0024
In the Patna High Court
Case No : CWJC No. 3963 of 2006

Mithilesh Narain

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Citation : (2006) 3 PLJR 548

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Heard Mr. J.P. Shukla, counsel for the petitioner, Mr. Ambuj Nayan Chaubey representing the State Advisory Committee, Mr. Sanjay Kumar, Govt. Pleader No. XV appearing for the State of Bihar and Mr. Dhrub Mukherjee appearing for the State of Jharkhand. As a result of cadre division, following the bifurcation of the State, the service of the petitioner, who worked as Rajbhasha Sahayak Grade II in the Rajbhasha Department, Govt. of Bihar, is allocated to the new State of Jharkhand. He is aggrieved by the allocation of his service to Jharkhand and seeks to challenge the recommendation of the State Advisory Committee and the decision of the Central Government based on it. According to the petitioner, in his place, another employee/other employees should have been sent to Jharkhand on the basis of his/their caste(s) alone and notwithstanding the fact that the other employee(s) too like the petitioner was appointed on unreserved post(s).

2. The facts of the case are brief and simple. The sanctioned strength in the cadre of Rajbhasha Sahayak Grade II was fourteen and following the ratio fixed for cadre division, nine would go to Bihar and five to Jharkhand. But at the material time only nine people, including the petitioner, were holding the posts in question. Their names and their respective dates of appointment are given in para 5 of the rejoinder affidavit filed by the petitioner. The list is as follows:

Sr. No. Name of Sahayaks Year of Appointment

1. Chatradhari Pd. Karn 1975

2. Bindeshwer Thakur 1975

3. Chandrashekhar Singh "

4. Jagannath Choudhary 1975

5. Nand Kumar Sinha -

6. Mithilesh Narain 1988

7. Karuna Nand Tiwary 1988

8. Jaiprakash Upadhyay 1988

9. Sidheshwar Prasad 1988

3. All the nine people had their domiciles in the State of Bihar and had given their respective options for this State.

4. In the counter affidavit filed on behalf of the State Advisory Committee the broad principles are indicated on the basis of which the division of cadres was made. In light of those principles, out of the nine people working as Rajbhasha Sahayak Grade II, six would go to Bihar and three to Jharkhand. In the statements received from the Government Department only one employee, namely, Sidheshwar Prasad was shown as a B.C. candidate and the rest were shown to belong to unreserved category. Applying the principle of reservation-category-based allocation, the quota of B.C. category for Bihar was one and on that basis Sidheshwar Prasad was allocated to this State. Thus, remained eight employees, all belonging to unreserved category out of which five had to stay in Bihar and three were to go to Jharkhand. As everyone belonged to the unreserved category and had his domicile in this State and had also given the option for the State, allocation was made on the basis of seniority. Five people from the top, thus, came to stay in Bihar and the petitioner at serial No. 6 and two others (at SI. Nos. 7 & 8) were allocated to the State of Jharkhand.

5. The tentative allocation list was issued accordingly. Against the tentative allocation list the petitioner filed his objection stating that two people above him, namely, Bindeshwari Thakur and Jagannath Choudhary (at serials 2 and 4 of the list quoted above) were wrongly taken to belong to unreserved category. They in fact belonged to the B.C. category and on that basis they should have gone to Jharkhand against the B.C. quota for the State. On the objection made by the petitioner the State Advisory Committee asked for further clarification from the concerned department. In response to the query by the committee, the Government Department sent the clarification a copy of which is at Annexure 5. In Annexure 5 it was clarified that though Bindeshwari Thakur and Jagannath Choudhary by virtue of their castes belonged to the B.C. category, their appointments were made as candidates of unreserved category and in their

service records they were described as general candidates. In light of the clarification received from the department, in the final allocation the position remain unchanged in so far as the petitioner is concerned.

6. Mr. J.P. Shukla, counsel for the petitioner strongly argued that allocations were made in violation of the principles laid down by the Committee. He pointed out that in making allocations due consideration was required to be given to the different reservation categories. He further submitted that since Bindeshwari Thakur and Jagannath Choudhary, on the basis of their castes, belonged to B.C., they should have gone to Jharkhand regardless of anything else.

7. I find the submission difficult to accept. The two employees in question might belong to castes falling in the B.C. category. Nevertheless, they were appointed as general candidates and in the service records they are treated as such. The State counsel clarified that both Bindeshwari Thakur and Jagannath Choudhary were appointed in the year, 1975 when there was no reservation in favour of the B.C. They were appointed as general candidates. Even during their tenure of service they were not allowed any promotion or any other benefit in service as B.C. category candidates.

8. In para 8 of the counter affidavit filed on behalf of the State, it is stated that Bindeshwari Thakur and Jagannath Choudhary were accepted by the department as general category candidates and Sidheshwar Prasad as belonging to the B.C. Allocation of service to this State or the newly created State of Jharkhand is matter directly related to Government employment. It must, therefore, be decided on the basis of service record and not in light of facts of personal life. I am clearly of the view that for the purpose of allocation of service what is determining is the description of the employee in the service record and not his actual caste. That being the position I find no infirmity in the impugned allocation. No relief can be granted to the petitioner. This writ petition is dismissed.