
(2006) 09 PAT CK 0030
In the Patna High Court
Case No : CWJC No. 6183 of 2006

Prem Lal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:

Citation : (2007) 1 PLJR 138

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Dr. Sadanand Jha, Senior Advocate appearing for the petitioner, Mr. Ray Shivajee Nath, Additional Advocate General No. IV appearing on behalf of the State and Mr. Sarva Deo Singh, Counsel representing the State Advisory Committee. Initially, this case was one of a batch of 16 cases. Almost all other cases of the batch were withdrawn, on different grounds, in course of hearing. Thus, in the end, this case was left to be heard on its own independent facts.

2. The matter relates to allocation of the petitioner's service to the State of Jharkhand as a result of the division of the cadre of Block Agriculture Officers, following the bifurcation of the State. The facts are brief and may be stated thus.

3. On creation of the State of Jharkhand, the Central Government constituted the State Advisory Committee to examine individual cases and make its recommendation for allocation of services of the Government employees to the two States. The Advisory Committee issued a notice on 29.1.2001 asking all Government employees whose cases were under consideration for cadre division to give option by 20.2.2001 either to stay in this State or to go over to the State of Jharkhand. The option was required to be submitted to the respective Administrative Departments in a prescribed form. It is the case of the petitioner that he duly submitted his option for Bihar in the prescribed form in the

Agriculture Department before the due date. In the tentative allocation list that came out on 19.3.2003, the petitioner was shown among those whose services were allocated to the State of Jharkhand. The petitioner was also shown as a "non-optee", that is to say, an employee who had not given any option either to stay in Bihar or to go to Jharkhand. Aggrieved by the allocation of his service to the State of Jharkhand and more aggrieved by being treated as non-optee, the petitioner filed his objection/representation before the Department and the State Advisory Committee.

4. It appears that in raising the objections, the petitioner was not alone; a number of other Officers of Bihar Agriculture Service Category II made similar objections claiming that though they had submitted their options for staying in Bihar, they were wrongly treated as non-optees and allocated to Jharkhand. It may be noted here that apparently all the objections were not bona fide and some of them, according to the counter affidavit filed by the State, were even based on interpolation of records.

5. Under the circumstances, the State Advisory Committee seems to have done its best. It repeatedly asked the concerned department of the State Government to furnish to it the correct facts, emphasizing all the times that any incorrect representation or omission of any relevant facts would lead to serious consequences for the concerned employees. Since the tentative allocations were made, it insisted on unassailable materials to show that those employees who were claiming that they were wrongly considered as non-optees had in fact given their option within time and their options were not communicated to the Advisory Committee by the State Government. Unsurprisingly, the State Government continued to act in the matter in a highly cavalier manner. Without any serious verification of the facts/materials with regard to each of the employees raising the objection it appears to have confirmed by letter No. 1878, dated 13.6.2005 that a number of employees, including the petitioner, had in fact given their options to stay in Bihar. The letter of the State Government was apparently not supported by any "unassailable" material insisted upon by the Advisory Committee. The Advisory Committee, therefore, reviewed the whole matter and finally in its meeting held on 12.9.2005 decided not to accept the confirmation by the State Government that all those employees, including the petitioner, had given their options for the State of Bihar. The Committee accordingly proceeded to treat them as non-optees and finally recommended for the allocation of their services to the State of Jharkhand. The Central Government passed order(s) on the basis of the Committee's recommendation and the State Government issued the necessary consequential orders.

6. Against the allocation of their services to Jharkhand, 16 writ petitions including the one in hand came to the Court from members of the Bihar Agriculture Service Category II. As all the cases were from the same service and were based substantially on the same ground, all those cases were put altogether in one batch.

7. The State Government filed a consolidated counter affidavit in one of those cases being C.W.J.C. No. 6251 of 2006 (Kartik Kumar vs. State of Bihar and Others). It was made clear in the counter affidavit that it was being filed in 14 cases, a list of which was given in paragraph 5. The case in hand was at serial No. 5 in that list. C.W.J.C. No. 6251 of 2006 was dismissed as not pressed by order dated 4.9.2006 but the counter affidavit lying on record of that case has been used in course of hearing of the present case.

8. From the statements made in the counter affidavit, it is apparent that though the objections raised by some of the petitioners in the cases in the batch were genuine, similar claims made by some others were not so and those were based on interpolation of records. In the State's counter affidavit, it was stated that the department had maintained a KACCHA REGISTER for entering options given by the Officers. It was further stated as follows:

From perusal of register maintained in this Department for the purpose of entry of options regarding Cadre-Division it appears that out of total 16 (sixteen) petitioners names of only six petitioners namely Kartik Kumar, Udaishankar Prasad, Premalal Singh, Nirbhay Kumar Singh, Udai Pratap and Raj Bihari Singh submitted options which are entered in the register at serial Nos. 1316(B), 1783, 2183, 630(A) and 2308 and 2305 respectively. In respect of the rest ten namely Chandramani Prasad, Madheshwar Singh, Bimal Kumar Sinha, Surendra Prasad Rai, Ravi Shankar Singh, Dinesh Kr. Singh, Shailendra Mohan, Surendra Kumar, Lakshmeshwar Narain Singh and Rajeshwar Pd. Singh it is to mention here that their names are not entered in the same register. But it is also worth mentioning here that some interpolations are quite apparent at serial No. s 1316(B), 630(A) and 2308.

9. It is thus apparent that in so far as the present petition is concerned, the option submitted by him was entered against serial No. 2183 and there was no interpolation in so far as that serial number is concerned. It, therefore, appears that the petitioner had in fact given his option in time but it was not communicated to the State Advisory Committee due to some lapse in the concerned department and when the petitioner raised the objection it was drowned in the clamour of a large number of false claims. I am, therefore, of the view that the petitioner was wrongly treated as non-optee and his case, therefore, requires to be reconsidered in light of what is stated above.

10. Apart from this, according to the petitioner, his wife suffers from brain tumour and she was being treated at hospitals outside that State and the medical expenses were also reimbursed by the State Government (see, Annexures 9 & 10). It is contended on behalf of the petitioner that his case, therefore, qualifies under the special category.

11. In view of the discussions made above, I am satisfied that the allocation of the petitioner's service to Jharkhand was invalid and unsustainable in law. The recommendation made by the State Advisory Committee and the order(s) of the

Central Government passed on that basis and the consequential order(s) issued by the State Government are accordingly set aside and the matter is remitted to the State Advisory Committee to consider the petitioner's case afresh in light of this order.

12. It is hoped and expected that a final decision on the petitioner's case will be taken within three months from the date of receipt/production of a copy of this order before the State Advisory Committee. In the result, this writ petition is allowed but with no order as to cost.