

(2013) 10 JH CK 0058
In the Jharkhand High Court
Case No : WP (S) No. 4317 of 2009

Ram Sharan Sinha and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Citation : (2013) 4 JLJR 582

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Shresth Gautam, for the Appellant; R. Bhengra and R. Kerketta, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. In the present writ application petitioners have assailed the office order contained in Memo No. 216 dated 22.8.2009 (Annexure-19) issued by the Joint Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand whereby they have been reverted to the post of stenographer from the post of Personal Assistant.

2. There is a background to the instant controversy and for resolution of the issues involved in the writ petition, necessary facts which needs to be narrated in brief are being indicated hereunder. The present petitioners were appointed by the Office order dated 27.5.1988 issued by the Deputy Director, Geology, Ranchi Circle and has been brought on record by the petitioners vide Annexure-6 to rejoinder to the counter affidavit as also vide Annexure-B to the reply filed by the respondent-State. At the outset it is relevant to mention the contents of the said appointment letter of the petitioners as it may have substantial bearing on the final outcome of the case. The Office order states that in terms of the direction of the Director Geology, Bihar, Patna contained at Memo No. 2786 M. Patna dated 5.5.1988 and against the post created under different offices under the Directorate of Geology these petitioners alongwith few others were being

appointed as Stenographer upon recommendation of the departmental selection committee and were posted in different offices. The petitioner No. 1 whose name figured at Serial No. 6 was posted at the office of Additional Director, Mines and Geology Department, Patna. Petitioner No. 2 who figured at Serial No. 2 was posted under the Deputy Director," Geology, Headquarters in the same department at Patna. Petitioner No. 3 figured at Serial No. 5 and was posted under office of Deputy Director, Geology, Advance Planning under the same department at Patna. The other persons appointed under the said office order were posted in offices under the Directorate such as under the Deputy Director, Geology, Data Bank at Patna, under the Deputy Director, State Geological Laboratory, Hazaribag and the last one was posted under the Additional Director, Department of Mines and Geology, Ranchi. The order of appointment as such was issued by the Deputy Director, Department of Mines and Geology, Ranchi Circle, Ranchi. These petitioners remained in the Headquarters of the Directorate of Geology in different offices being posted from time to time. Vide letter No. 788 issued on 4-10.9.1990, the Department of Personnel, Administrative Reforms and Rajbhasha, Bihar (hereinafter referred to as DOPT, Government of Bihar), sought for names of such stenographers who were appointed in the Secretariat and its attached offices prior to 10.11.1988 for consideration of their names for upgradation of their post to that of Personal Assistant. The names of the present petitioners along with one more person were recommended vide letter dated 7.11.1990 to the DOPT, Government of Bihar for consideration for being upgraded to the post of Personal Assistant which is annexed as Annexure-7, issued by the Director, Geology, Bihar, Patna. The relevant details relating to their appointment letters, the order under which the post of such stenographers were created, updated service book of such stenographers including the petitioners as well as A.C.R.s duly certified were forwarded to the Department of Personnel, Administrative Reforms and Rajbhasha for consideration of their cases for such upgradation. Thereafter, by a decision which is contained at Annexure-8 dated 23.6.1995 the DOPT, Government of Bihar took decision for upgradation of such stenographers who were appointed in the Secretariat and attached offices prior to 10.11.1988 to that of Personal Assistant from the date of such notification. The names of these petitioners are contained in the annexure enclosed to the said order at serial Nos. 5, 6 and 8 respectively shown against the Mines and Geology Department. In such circumstances, vide letter dated 10.7.1995 (Annexure-9) the office order was issued by the Directorate of Geology in tune with the decision of the DOPT, Government of Bihar contained at Annexure-8 allowing these petitioners who were stenographers then to submit their joining as Personal Assistant relieving them w.e.f. 26.6.1995. Annexure-10 was also issued consequent thereof on 23.8.1995 by the DOPT, Government of Bihar where their date of joining were indicated. The petitioners name figured at Serial Nos. 1, 2, 4 respectively in the said list. Thereafter, vide Annexure-11 they were confirmed by office order dated 9.2.2002 issued by the DOPT, Bihar, Patna.

3. In the aforesaid background, the controversy which has led to the issuance of

the impugned order was initiated on the filing of writ petition being C.W.J.C. No. 7088 of 1999 by one Nawal Kishore Prasad Singh claiming himself to be similarly situated with the petitioners. He sought direction upon the respondents to recommend his case for appointment/upgradation as Personal Assistant upon the requisition made by the D.O.P.T., Government of Bihar letter dated 4.10.1990 alleging that the present petitioners and another who were junior to him and working as stenographers have already been upgraded as Personal Assistant vide order contained in letter No. 23.6.1995. The present petitioners also appeared in the said writ petition and after hearing the argument of the parties including the counsel for the State judgment was passed by the learned Single Judge of the Patna High Court on 17.9.2004 (Annexure-12). The extract of the relevant operative portion of the said Judgment is quoted herein below;--

In view of the stand taken by, the State respondents that neither the petitioner nor the private respondents are eligible for up-gradation/appointment as Personal Assistant as they were never appointed as Stenographers in the Secretariat office, I dispose of this writ application with a direction to the State respondents to either cancel the up-gradation/appointment of private respondents (7 to 10) from the cadre of the Personal Assistant or recommend/appoint/upgrade the petitioner in the said cadre as admittedly the petitioner has been appointed as a Stenographer by the Director, Mines and Geology, much prior to the appointment of the private respondents and in the event the appointment/up-gradation of the private respondents is not cancelled then in that event the petitioner should not only be appointed as Personal Assistant but he should also be given the consequential monetary benefits from the date the private respondents were allowed those benefits as the petitioner on his own had never gone to Ranchi or Bhagalpur. He had been transferred to those places and in compliance of a valid transfer order he had moved to Ranchi/Bhagalpur as such, he should not be deprived of the monetary benefits on that score. The exercise in terms of this order should be completed either way within three months from the date of receipt/production of a copy of this order.

This disposes of this writ application.

4. The petitioners herein pursued L.P.A. No. 1065 of 2004 being aggrieved by the said judgment, which was however disposed of with a liberty to the petitioners to approach the learned Single Judge for review or reconsideration of the matter. It was alleged by the petitioners that certain supporting documents showing that their appointments were made in the Secretariat and allied offices were not considered by the learned Single Judge. The judgment dated 2.11.2004 in the said L.P.A. is annexed as Annexure-13. Thereafter, petitioners preferred Civil Review No. 182 of 2004 alongwith Civil Review No. 188 of 2004. During the pendency of the said review petitions, in terms of the direction passed in C.W.J.C. No 7088 of 1999 dated 17.9.2004 the respondent-State of Bihar had issued office order No. 191 dated 16.7.2005 where under the present petitioners who were review petitioners were reverted from the post of Personal Assistant to

the post of Stenographer. Taking into account the aforesaid development learned Single Judge of the Patna High Court disposed of the review petitions vide Judgment dated 17.8.2005 in the following terms:--

Having heard the petitioners and the State of Bihar, I am of the view that petitioners should assail the Office Order No. 1919 dated 16th July, 2005 by filing another writ application which should be considered on its own merit in accordance with law notwithstanding the findings recorded in the order dated 17.9.2004 passed in C.W.J.C. Mo. 7088 of 1999.

5. These petitioners were allocated to the successor State of Jharkhand being relieved on 15.6.2005 pursuant to the cadre allocation. The other similarly placed person however remained in the successor State of Bihar and moved a writ application against the order dated 16.7.2005 which was disposed of directing the Secretary, DOPT, Government of Bihar to dispose of his representation. The present petitioners were not party to the said writ petition. However, in the light of the communication sent by the State of Bihar for taking appropriate action against the petitioners as their services were transferred to the State of Jharkhand, petitioners were asked to show cause vide memo No. 2741 dated 31.5.2006 (Annexure-17) seeking explanation as to (sic--why?) they be not reverted to the post of stenographer since as per the notification dated 28.5.1992 issued by the DOPT, Government of Bihar though the name of Mines and Geology department is indicated as office attached to the Secretariat but in the said list the Directorate of Geology is not indicated. Since their appointment order was issued under the signature of Deputy Director, Geology, Ranchi Circle, Ranchi dated 27.5.1988 they were asked to explain as to why they be not reverted to the post of stenographer from the post of Personal Assistant. Petitioners submitted their response vide Annexure-18 inter-alia taking a stand that Directorate of Mines and Geology is a part of the attached offices of Secretariat which functions under the Secretariat at Vikas Bhawan, Patna itself and, therefore, their upgradation by the order issued on 23.6.1995 by the DOPT, Government of Bihar, Patna is perfect and valid. Thereafter, the impugned order contained at Annexure-19 dated 22.8.2009 was issued under the signature of Joint Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand.

6. The questions, therefore, which arises in the present writ petition for determination are:--

(i) Whether the petitioners were appointed in the Directorate of Geology against the sanctioned vacant post and were to be treated as incumbents who were appointed in the Directorate of Geology itself and not in the regional offices of the Directorate?

(ii) If the petitioners were appointed in the Directorate of Geology, whether the Directorate of Geology itself is attached office of Secretariat which justified their upgradation to the post of Personal Assistant?

7. The petitioners have relied upon Annexure-1 an Administrative report of 1994-95 of the Department of Mines and Geology, Bihar which deals with the creation of Directorate of Geology. Page 62, 63, 64 and 70 of the instant writ petition containing the relevant portion of Annexure-1 are related to the creation of the Directorate of Geology and also its different regional offices and other offices under the Directorate headquarters itself.

Learned counsel for the petitioners submits that these petitioners have been appointed on post created under the Directorate of Geology and upon recommendation of the Departmental Selection Committee, under the directions of the Director, Mines and Geology. They have been posted right since their appointment in offices under the Directorate itself. They have neither been appointed in the regional offices against any sanctioned post nor ever transferred outside. It is further submitted that the Directorate itself is a part of the Secretariat is not in dispute in view of the specific information furnished under the Right to Information Act vide communication contained in letter No. 391/M, Patna dated 24.3.2009 (Annexure-20) issued by the Public Information Officer, Mines and Geology, Government of Bihar. It clearly states that the Directorate of Geology was part of the Secretariat and its allied offices before the year 2000. Learned counsel for the petitioner also submits that the said letter also indicates that the files relating to creation of post of personnel appointed prior to 2000 are not available in the department. It is the contention of learned counsel for the petitioner that the fact that the Directorate of Geology are part of Secretariat and allied offices is further reinforced in view of the rules notified by the Government of Jharkhand itself on 2.8.2010 contained at Annexure-24. In the Appendix attached thereto it is clearly indicated at Serial No. 31 that the Directorate of Mines and Geology is a part of the Secretariat. In such circumstances, it is submitted that the entire case of the respondents which hinges upon the letter dated 2.3.2000 brought on record vide Annexure-A to the reply by the respondent-State to the rejoinder is apparently without any factual basis to come to a definite conclusion that these petitioners were appointed in regional offices against the sanctioned vacant post of stenographers. This alone has been basis of the issuance of the impugned order and the stand of the respondent-State to revert the petitioners to the post of stenographer from the post of Personal Assistant. Petitioners have also relied upon the notings on the files which is contained at Annexure-7 to the rejoinder which contains the exercise at different hierarchy under the Department of Mines and Geology in preparing their stand to be filed in the writ petition filed by the said Nawal Kishore Prasad Singh in C.W.J.C. No. 7088 of 1999. Learned counsel for the petitioner submitted that the entire notings of the file would only indicate that the relevant documents which related to the creation of posts of these petitioners were not available when such exercise were undertaken and only on inferential basis and that too on the basis of noting of the senior law officer, the respondents have taken stand that the upgradation of the petitioners were not justified as they were appointed against the vacant post in the regional offices under the Directorate of Mines and

Geology. This is also the basis for issuance of the letter dated 2.3.2000. In such circumstances, impugned order has been assailed, after elaborate argument advanced by learned counsel for the petitioner.

8. Counter affidavit have been filed by the respondent-State. Learned counsel for the respondent-State has banked upon the letter dated 2.3.2000 contained at Annexure-A to the reply to the rejoinder justifying the action of the respondents. It is submitted that petitioners were appointed on the post created for regional offices under the Directorate of Geology and therefore cannot be considered for upgradation to the post of Personal Assistant unlike such incumbents who were posted at Secretariat or allied offices. It is further submitted that under the impression that the Directorate of Mines and Geology is also allied office of Secretariat these petitioners have been upgraded to the post of Personal Assistant in the year 1995. The respondents have however not disputed the documents annexed as Annexure-1 which relates to the creation of Directorate of Mines and Geology. They do not dispute the authenticity of the document which are annexed at Annexures-6, 7, 8, 9 and 10 in which these petitioners were earlier considered and upgraded to the post of Personal Assistant after due consideration of their cases by the competent Authority. Learned counsel for the respondent-State submits that impugned order has been issued after the issue was also determined by the DOPT, Government of Bihar, Patna pursuant to the direction passed earlier in C.W.J.C. No. 7088 of 1999 by the Patna High Court being office order dated 16.7.2005 (Annexure-16). Annexure-D dated 22.8.2009 (impugned order) is again based upon the communication of the Mines and Geology Department, Government of Bihar contained in letter No. 785 dated 2.3.2000 brought on record vide Annexure-A to the reply to the rejoinder. Respondents are therefore, justified in issuing the impugned order as the petitioners are not legally entitled to be upgraded to the post of Personal Assistant, in such circumstances.

9. I have heard learned counsel for the parties at some length and gone through the relevant materials on record including the impugned order. The issues which are relevant for proper resolution of the controversy which appears to have lingered for quite some time after upgradation of the petitioners, on being questioned by one Nawal Kishore Prasad Singh in C.W.J.C. No. 7088 of 1999, can be addressed after considering the relevant documents which related to the Directorate of Mines and Geology in the first place as also the documents which related to the appointment of the petitioners and their subsequent upgradation to the post of Personal Assistant, which has subsequently been annulled on the basis of the letter dated 2.3.2000. Annexure-1 being an Administrative Report of 1994-95 of Mines and Geology Department, Government of Bihar deals with the history of creation of the Directorate of Mines and Geology. A perusal of it shows that the Directorate of Geology under the Mines and Geology department initially comprised Director Mines, Additional Director, Mines and few subordinate authorities. Further posts were also created under the Directorate being Deputy Director, Planning, Deputy Director, Data Bank as also other posts. It further

appears from perusal of page 11 of Annexure-1 to the writ petition that regional offices of the Mines and Geology Department were created at Jamshedpur, Ranchi, Daltonganj, Bhagalpur, Santhal Pargana and Muzaffarpur. It further indicates that Directorate of Geology itself had different offices under it being Data Bank, State Geological Laboratory at Hazaribag, one "Began" unit, Advance Planning and Monitoring Cell, few other cells including a Workshop at Hazaribag.

10. A perusal of the appointment letter of the petitioners dated 27.5.1988, Annexure-B to reply to the rejoinder as has also been referred to in the earlier part of the judgment shows that against posts created for different offices under the Directorate of Geology, the name of these petitioners were recommended by the Departmental Selection Committee and in terms of the direction of the Director Geology, Bihar, Patna contained at Memo No. 2786 M. Patna dated 5.5.1988 these petitioners alongwith others were appointed and posted in offices such as under the Additional Director, Mines and Geology Department, Patna, under the Deputy Director, Geology, Headquarters in the same department at Patna, under office of Deputy Director, Geology, Advance Planning under the same department at Patna. Other persons appointed under the same office order were also posted under the Directorate, such as under the Deputy Director, Geology, Data Bank at Patna, under the Deputy Director, State Geological Laboratory, Hazaribag and under the Additional Director, Department of Mines and Geology, Ranchi. These offices were under the Directorate of Mines and Geology as would appear from perusal of page 70 of Annexure-1 and not regional offices. The petitioners continued in Directorate of Geology in different offices in the headquarters till their names were recommended in terms of the letter No. 788 issued on 4-10.9.1999 by the DOPT, Government of Bihar (Annexure-6) for consideration of their cases for upgradation to the post of Personal Assistant. Annexure-7 is the letter under the signature of Director, Geology dated 7.11.1990 forwarding necessary details of these petitioners like their appointment letters, the file relating to creation of post, updated service book and A.C.R.s duly certified. This ultimately led to the upgradation of the petitioner by a conscious decision of the DOPT, Government of Bihar, Patna contained at Annexure-8 dated 23.6.1995; names of persons including these petitioners are indicated in list also enclosed to the said letter. The petitioners, thereafter were relieved to join on the upgraded post vide Annexure-10 dated 23.8.1995 issued by the Department of Personnel, Administrative Reforms and Rajbhasha. Their services as Personal Assistant was confirmed alongwith several others vide Annexure-11 dated 9.2.2002 by the Department of Personnel, Administrative Reforms and Rajbhasha, Bihar, Patna. These are contemporaneous documents which can be looked into and are based upon the decision taken by the competent Authority at the relevant point of time, while determining the issues involved in the present case. These documents are of age more than 15-20 years back.

11. On the other hand the respondents have justified the impugned action of the State on the basis of letter dated 2.3.2000 issued by the Department of Geology,

Government of Bihar addressed to DOPT, Government of Bihar. The contents in para 2 of the letter dated 2.3.2000 records that petitioners were appointed against the sanctioned posts in the regional offices of the Directorate of Geology and not appointed under the Secretariat and allied offices. The said letter dated 2.3.2000 itself was issued in view of the writ petition filed by Nawal Kishore Prasad Singh in C.W.J.C. No. 7088 of 1999 which finds reference in the said letter itself. The background for issuance of the aforesaid letter is also apparent from the notings which have been obtained by the petitioners under Right to Information Act and contained at Annexure-7 to the rejoinder filed to the Counter Affidavit. A perusal of the notings at page 40,41,42,43 and 46 of the said rejoinder which are part of Annexure-7 shows that successive authorities in the hierarchy have noted that files relating to the creation of the post on which petitioners were initially appointed as stenographer were not available. In the last noting contained at page 46 an inference has been drawn that these posts were created under the Directorate of Geology in the different offices and not the Secretariat and its allied offices. However, this inference has not dislodged the petitioners' case as different offices under which they were appointed were also offices under the Directorate itself being office of Data Bank, Advance Monitoring and Planning Cell as also under the Additional Director, Mines and Geology, Department of Mines, Government of Bihar situated at Vikas Bhavan, Patna. Therefore, in the background of such notings in the file, the letter dated 2.3.2000 which comes to an inference that post upon which petitioners were appointed were not created under the Directorate of Geology but in the other regional offices is not based upon any materials which were present on record. Such a conclusion on the other hand discredited the contemporaneous documents which related to the original appointment of the petitioners and the exercise conducted vide Annexures 7 to 10 leading to their upgradation to the post of Personal Assistant. The earlier documents prepared at the relevant point of time by the competent Authority do lead to a definite conclusion that these petitioners were appointed under the Directorate of Geology itself by orders of the Director, Geology. It would be relevant to note here that the learned Single Judge of the Patna High Court in the judgment passed in the review petitions on 17.8.2005 had categorically observed that case of the petitioners would be considered on its own merit in accordance with law notwithstanding the findings recorded in the order dated 17.9.2004 passed in C.W.J.C. No. 7088 of 1999. It is therefore apparent that the root question whether the original appointment of these petitioners were made against vacant sanctioned post created under the Directorate of Geology were never earlier determined. On the stand of the respondent-State of Bihar as reflected in letter dated 2.3.2000 all ensuing actions have been taken which has resulted in the reversion of the petitioners to the original post of Stenographer. There is no reason to discredit the earlier documents which have been copiously referred to hereinabove and which lead to the conclusion that these petitioners were initially appointed in different offices under the Directorate of Geology itself and continued as such in the said offices which was the basis for recommendation of their names for upgradation to the

post of Personal Assistant and has apparently led to the issuance of letter for upgradation dated 23.6.1995 (Annexure-8). Therefore, the issue No. 1 framed earlier is answered in favour of the petitioner. There is not much debate in relation to the second issue in view of the specific information furnished by the Public Information Officer, Mines and Geology, Government of Bihar under the Right to Information Act contained at Annexure-20 that the Directorate of Geology was a part of the Secretariat and allied offices even prior to the year 2000. Therefore the second issue also stands answered in favour of the petitioners also keeping into regard the discussion made earlier in the judgment. The Government of Jharkhand has notified (Annexure-24) the Secretariat Service Rules of 2010 where under as per Serial No. 31 of the Appendix the Directorate of Mines and Geology has been held to be a part of the Secretariat and allied offices. This however may not have a retrospective effect to support the petitioners' case.

12. In the totality of the facts and circumstances and the reasons which are discussed herein above, therefore, the impugned order does not survive the test of legal scrutiny in exercise of powers of judicial review by this Court. Therefore the impugned order has to go. Accordingly, the impugned order contained in Memo No. 216 dated 22.8.2009 (Annexure-19) issued by the Joint Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand whereby petitioners have been reverted to the post of stenographer from the post of Personal Assistant is hereby quashed. Petitioners shall be entitled to be considered as Personal Assistant pursuant to their upgradation made vide Annexure-8 dated 23.6.1995 and are also entitled to all the benefits of salary, seniority etc. and continuity on the said post from the date on which they have been reverted. The writ petition is allowed.