
(2016) 08 JH CK 0019
In the Jharkhand High Court
Case No : W.P.(S) No.367 of 2014

Ramjee Prasad

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72(2)
Constitution of India, 1950 — Article 16, 226

Citation : (2016) 3 AIRJharR 659 : (2017) 1 JCR 325

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. Rahul Kumar, Advocate, for the Petitioners; J.C. to G.A, for the Respondents; Mr. S.P. Roy, Advocate, for the State of Bihar

Final Decision : Dismissed

Judgement

Mr. H.C. Mishra, J.— Heard learned counsel for the petitioners, learned counsel for the State of Jharkhand as also learned counsel for the State of Bihar.

2. The petitioners in this application have prayed for a direction upon the respondent authorities to transfer the services of the petitioners on their request, on mutual basis, to the State of Bihar, pursuant to the decision taken by the State of Bihar and the State of Jharkhand in terms of Section 72 (2) of the Bihar Re-organization Act.

3. The petitioners were appointed as Assistant Teachers in the year 1996 and they were posted in different schools in the districts of Latehar, Jamtara and Godda. The case of the petitioners is that the services of the petitioners belong to district cadre and their services were transferable only within the district, in which, they were appointed. After creation of State of Jharkhand, the petitioners remained in the territory of the State of Jharkhand, where they were initially appointed prior to the creation of State of Jharkhand, pursuant to the Bihar Re-organization Act.

4. A letter was issued by the Union of India on 9th December 2009, relating to the Inter-State transfer of the employees, who were working in either of the states. It was directed in the said letter that those staffs serving in the village, tehsil, district, division or region, who are normally liable for transfer within such area and are part of the such territorial cadres, shall be deemed to have been appointed to such posts by the successor State on and from the appointed day in whose territory the area had been included. It was also decided to give them an opportunity for mutual transfer on Inter-State basis and accordingly a letter No.993 dated 27th January 2010 was issued by the State of Bihar in its Home Department, as contained in Annexure-3 to the writ application, taking note of the directions given in the letter dated 9th December 2009 by the Union of India, whereby it was informed that such staff, who were serving in the region of the State of Jharkhand, and who were deemed to be appointed on such posts by the successor State of Jharkhand, may also be given the opportunity of Inter-State transfer on mutual basis only. Pursuant to the letter dated 27th January 2010, an advertisement was issued by the State of Bihar on 3.2.2010, whereby the applications for mutual transfer were invited.

5. Subsequently, a letter was written by the State of Bihar to the Chief Secretary of the state of Jharkhand, as contained in Memo No. 6764 dated 30th July 2013 wherein it is stated that as per the direction given by the Union of India, the decision was required to be taken about the Inter-State transfer of cadre of the employees in cases, the employees who were allocated a particular State cadre and wanted transfer of their State cadre, by the State of Jharkhand and the State of Bihar jointly, for which, the State of Bihar was appointed as the nodal State. It is further pointed out from the said letter that in consultation and with approval of the State of Jharkhand, necessary circulars were issued giving the guidelines for Inter-State transfer of the employees after the final allocation of their cadre. One circular was issued on 29.6.2010 wherein it was provided to give a finality to the matters of Inter-State transfers and it was resolved that no claim for inter-state transfer shall be entertained after 31.08.2010, and all the requests for transfer received until 31.07.2010 had been complied with on 03.09.2010, either by accepting the recommendation or rejecting the same in appropriate cases. This letter has been brought on record as Annexure-7 to the writ application. In this letter, there is mention about such employees whose State cadre were finalised after 31.07.2010, in their cases for giving a finality to the process, it was decided that the recommendations must be sent by the concerned State Government by 30.9.2013, which shall be finally decided latest by 31.12.2013 and it was made clear that the process for Inter-State transfer would be closed after 31.12.2013.

6. It is the case of the petitioners that they made applications for mutual transfer to the State of Bihar and their applications were also recommended by their controlling officers on 26.9.2013. Learned counsel accordingly, submitted that since the recommendations were made in favour of the petitioner by the concerned authorities, prior to 30.9.2013, the petitioners are also entitled for

transfer of their service to the State of Bihar on mutual basis, but no decision has been taken by the State of Jharkhand for the mutual transfer of the petitioners to the State of Bihar. Learned counsel accordingly, submitted that it is a fit case, in which, the case of the petitioners be recommended for the Inter-State transfer to the State of Bihar on mutual basis.

7. Learned counsel for the State of Bihar has submitted that no recommendations have been sent to the State of Bihar from the State of Jharkhand for mutual transfer of the petitioners and accordingly, the State of Bihar was not likely to take any decision in the matter. Learned counsel for the State of Bihar has submitted that now the case of the petitioners cannot be considered as the cut of date, i.e. 30.9.2013 for receiving the recommendations in the State of Bihar has already expired, and it has been decided to finally close this chapter by 31.12.2013.

8. The stand of learned counsel for the State of Jharkhand is that the recommendations to the State of Bihar ought to have been sent prior to 30.9.2013, in view of the letter dated 30.7.2013 as contained in Annexure-7 to the writ application, but the petitioners had submitted their applications belatedly and it was recommended by their controlling officers only on 26.9.2013, i.e., only four days prior to the cut of date, as mentioned in Annexure-7. Learned counsel for the State of Jharkhand has submitted that after 30.9.2013, the case of the petitioners could not be recommended to the State of Bihar for their Inter-State transfer to the State of Bihar on mutual basis.

9. Having heard learned counsels for the parties and upon going through the record, I find that the State of Bihar was made the nodal State in the matter of cadre division of the employees of the erstwhile State of Bihar upon creation of the State of Jharkhand pursuant to the Bihar Reorganisation Act. The letter dated 30.7.2013, as contained in Annexure-7 to the writ application clearly shows that with the consent of the State of Jharkhand, it was decided that the matter of Inter-State transfer must be given a finality and accordingly, so far as the case of the petitioners are concerned, it was decided that no recommendations would be made after 30.9.2013 and in the matters recommended up to 30.9.2013, the final decision had to be taken by 31.12.2013, where after and the chapter of Inter-State transfer has finally been closed. In the present case, I find that the petitioners had made their applications at a belated stage and their cases were recommended by their controlling officers only on 26.9.2013, i.e., only four days prior to the cut of date, i.e., 30.9.2013. As such, their cases could not be recommended for mutual transfer by the State of Jharkhand to the State of Bihar.

10. Accordingly, no case can be made out for giving any direction by this Court to make recommendation for mutual transfer of the petitioners on Inter-State basis, after the cut of date fixed in the matter.

11. There is no merit in this writ application and the same is accordingly, dismissed.