
(1999) 09 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 1907 of 1999 (R)

Ravi Bhushan Roy

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Jharkhand Area Autonomous Council Act, 1994 — Section 32(2)
Jharkhand Area Autonomous Council Rules — Rule 49(1), 53(7)

Citation : (2000) 1 PLJR 107

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.B. Gadodia and B.P. Mishra, for the Appellant; V.P. Singh and M/s. R.K. Marathia, Shukla Jha and A.B. Mahto for the State, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The case relates to transfer of petitioner and the 5th Respondent, who have been transferred by the State of Bihar along with others vide notification dated 30th June 99 (Annexure-6). By the impugned notification, while the petitioner has been transferred from Gumla to Purnia, on administrative ground, the 5th Respondent has been posted in place of the petitioner at Gumla.

The sole question to be determined in the present case is as to whether the State of Bihar has jurisdiction to transfer the petitioner from Gumla to Purnia or not. 2. Admittedly, the petitioner and 5th Respondent are Assistant Engineers (Civil), Water Resources (Minor Irrigation) Department of the State of Bihar. While the petitioner was posted at Gumla, within the jurisdiction of Jharkhand Area Autonomous Council (JAAC for short), the 5th Respondent was posted at Bhojpur.

3. According to the petitioner, his services were placed under the jurisdiction of JAAC by the State of Bihar since 15th July, 97; he having not completed three years duration under the JAAC and his service having not recalled under the State, the State of Bihar has no jurisdiction to transfer him as has been made

vide notification dated 30th June 99.

4. The case of the petitioner is that he was posted at Gumla vide notification dated 30th June" 97 issued by the State of Bihar. On such transfer, he joined at Gumla and took charge on 8th July, 97 and since then he continued to function at Gumla as an Assistant Engineer (Civil). Subsequently, the State of Bihar from its Water Resources (Minor Irrigation) Department issued notification on 15th July" 97 and placed the services of the Gazetted Officer of the Minor Irrigation under the control of JAAC for a period of three years. In pursuance of the State notification, his services stood placed under the JAAC since 15th July" 97, whereinafter no notification has been issued by the State recalling his services under the jurisdiction of the State. It is for the said reason, the power and jurisdiction of State of Bihar has been challenged by the petitioner in the matter of issuance of notification of transfer.

5. The Respondents appeared and filed their respective counter affidavits. They have taken almost similar plea while opposing the writ petition. It is accepted by the Respondents State that the petitioner was transferred to Gumla vide notification dated 30th June" 97 and took charge on 8th July" 97. The State has also accepted that the services of all the Gazetted Officers of Minor Irrigation Department were placed under the JAAC notification dated 15th July" 97. However, relying sub-section (2) to section 32 of Jharkhand Area Autonomous Council Act, 1994 (for short Act), the Respondents have taken plea that the Council has the power connected in respect of personnel posted in the area of the Council on the subjects specified in Schedule 3, but had no jurisdiction in respect of the persons posted in connection with the work scheme not wholly connected with the specified subjects under Schedule 3 of the Act.

6. Counsel for the Respondents State submitted that there are Gazetted Officers in the Minor Irrigation Deptt., who are posted within the Jharkhand Area in connection with to look after the work under "Plan" head, as also "Non-plan" head. Those who are posted in the "Non-plan" head, their works are wholly not connected with specified subjects as shown under Schedule 3 of the Act. Much stress was given on the word "wholly connected", as mentioned under sub-section (2) to section 32 of the Act and reliance was placed on letter dated 5th May" 99 issued by the Secretary, Water Resources (Minor Irrigation) Department.

7. According to the State, under the "plan" head, new schemes are framed by the Department for which assets are generated/created in terms with plan outlay, as marked by Planning Commission. On the other hand, under the "Non-plan" head, the maintenance and repairs are made with the help available under the said head. The JAAC has control in respect of "plan work" i.e. for creation of new assets/scheme etc., whereas the work under the "Non-plan" head, i.e. maintenance, repairs etc. are under the control of the State of Bihar and not the JAAC. They have made a distinction in respect of the case of the petitioner vis-a-vis, the decision given by this Court in the case of Asit Kumar Mukherjee and Others Vs. The State of Bihar and Others, .

8. The counsel for the 5th Respondent while taking same plea further submitted that the case of the petitioner was never specifically placed under the control of JAAC, his name having not shown in the notification dated 15th July" 97. Further, according to him, if it is presumed that his service was deemed to have been placed under the control of JAAC, vide notification dated 15th July" 97, the same presumption is to be made in respect of impugned notification dated 30th June" 99 and it is to be presumed that the services of the petitioner stood recalled under the State by the same notification.

9. The counsel also placed reliance on sections 29(3); 32(2) (a); and Rules 49(1) and 53(7) of the Rules framed under the Act.

10. Similar case fell for consideration before this Court, in the case of Asit Kumar Mukherjee (supra), wherein this Court held, as follows:

The State of Bihar is the appointing authority of gazetted officers posted in its different departments within the Jharkhand Area, including the petitioners and contesting respondents of these cases. It has jurisdiction to transfer any of its officers from one post to other post (see Rule 56 of Bihar Service Code). However, such posting can be made only against a clear vacant post and not against a post which has already been filled up. The State of Bihar has also jurisdiction, u/s 32(2) of the Act, 1994 to place the services of the gazetted officers under the disposal of JAAC, who are connected with the department/project as shown at Schedule 3 of the Act.

The JAAC has jurisdiction, u/s 32(2) of the Act to transfer or to post any gazetted officer, whose services have been placed under its disposal. Consequently, the JAAC has no power to transfer and/or to post any gazetted officer of the State Government, whose service has not been placed by the State Government to JAAC. The JAAC can issue such order of transfer and posting following the guidelines laid down by the State, only against a clear vacant post and not otherwise. Such posting can only be made within specified project as shown at Schedule 3 of the Act, within the Jharkhand area and not outside such area.

The State has jurisdiction to recall the services of any gazetted officer, whose service was placed under the JAAC, at any time. Till one or other gazetted officer, whose service has been placed under the JAAC is recalled, the State has no jurisdiction to issue any specific order of transfer and posting in respect of such gazetted officer. Similarly, the JAAC has no jurisdiction to issue any order of transfer and posting in respect of any gazetted officer, whose service has not been placed under it by the State.

Even after delegation of power u/s 32(2) of the Act, the State is not divested of its inherent power of transfer and posting of its gazetted officer against one or other post within the Jharkhand Area, except those whose services are being placed under the control of JAAC.

Both the JAAC and the State Government have concurrent jurisdiction to transfer

and post any gazetted officer of the State Government in a project under Schedule 3 of the Act, within Jharkhand Area but only with respect of such gazetted officer who remained under their respective control.

11. In the present case, the State has admitted that the services of all Gazetted Officers of the Minor Irrigation Department posted in Jharkhand area were placed under the jurisdiction of JAAC vide notification dated 15th July" 97. In the said notification, no distinction was made in respect of persons posted under "Plan" head or "Non-plan" head. The services of petitioner thereby was placed under the jurisdiction of JAAC since 15th July" 97. Once the services of the petitioner are placed under the jurisdiction of the JAAC, even if it is presumed that the JAAC had no business to do with the "Non-plan" head work, no notification of transfer or posting can be issued by the State, in respect of the petitioner, till his service is recalled under the State, as held by this Court in the case of Asit Kumar Mukherjee (supra).

12. In the aforesaid circumstances, it is not necessary to discuss the power and jurisdiction of JAAC in respect of one or other scheme/project, whether "plan" head or "Non-plan" head in the present case, nor it is necessary to discuss the relevant provisions of law as laid down under this Act and Rules, in this respect, as stated by the counsel for the Respondents.

13. The services of the petitioner have been specifically placed under the jurisdiction of the JAAC vide notification dated 15th July" 97, so it cannot be presumed that his services stood recalled under the State vide impugned notification dated 30th June" 99, no specific notification recalling his service having issued in terms with the decision of this Court in the case of Asit Kumar Mukherjee (supra).

14. In the facts and circumstances, the impugned notification dated 30th June" 99 so far as it relates to petitioner being without jurisdiction, I quash the same and consequently, in respect of vacant post at Gumla, the notification with regard to 5th Respondent also stands quashed.

15. However, this order will not stand in the way of the Respondents State to pass an appropriate order, in accordance with law, both in respect of petitioner and the 5th Respondents. The writ petition is allowed with the aforesaid observations.