

(2020) 12 JH CK 0070
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5194 of 2019

Sanjay Kumar And Ors	Vs	APPELLANT
State of Jharkhand And Ors		RESPONDENT

Date of Decision : 08-12-2020

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72, 73
Constitution Of India, 1950 — Article 309

Citation : (2020) 12 JH CK 0070

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ajit Kumar Senior, Rakesh Kumar Shahi, Diwakar Upadhyay, Jitendra Tripathi

Final Decision : Allowed

Judgement

1. Heard Mr. Ajit Kumar, learned senior counsel for the petitioners, Mr. Rakesh Kumar Shahi, learned counsel for the respondents-State, Mr.

Diwakar Upadhyay, learned counsel for the State of Bihar and Mr. Jitendra Tripathi, learned counsel for the Union of India.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioners have preferred this writ petition for quashing of the decision contained in letter dated 29.08.2009 with respect of loosing of seniority in case of mutual transfer vide letter no. 4450 dated 19.07.2008 issued by the Deputy Secretary, Personnel, Administrative Reforms & Rajbhasha

Department, Govt. of Jharkhand was recalled. Further prayer has been made for implementing the decision of the Nodal Agency i.e. Home (Special)

Department, Govt. of Bihar contained in letter no. 277 dated 03.02.2009 and letter no. 10458 dated 17.12.2009 and letter no. 2372 dated 11.03.2016 in

its letter and spirit with respect to the Jharkhand Secretariat Service and rearrange the seniority of the petitioners accordingly.

4. The petitioners belong to the Jharkhand Secretariat Services Cadre which was initially created in the year, 1988 by the erstwhile State of Bihar and

the same was adopted by the State of Jharkhand after bifurcation of the State. The petitioners after being declared successful in the Bihar Secretariat

Assistant Competitive Examination, 1993 conducted by the Bihar Public Service Commission in the year, 1994, they submitted their joining in

December, 1995 as directed in the Bihar Secretariat, Patna as an Assistant. After bifurcation of the erstwhile State of Bihar on 15.11.2000, the

services of the petitioners were allocated to the State of Jharkhand. The State of Jharkhand by virtue of power under proviso of Article 309 of the

Constitution of India, the Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand vide Notification No. 4619 dated

02.08.2010 has notified the Jharkhand Secretariat Services Rule, 2010 whereby the constitution, Appointment and Service conditions of Jharkhand

Secretariat Services Cadre has been incorporated and promulgated in the eye of law. In terms of 2nd Schedule of the Jharkhand Secretariat Services

Rule, 2010, the promotional Secretariat Services Rule, 2010, the promotional avenues available to an Assistant are Section Officer, Under Secretary,

Deputy Secretary and Joint Secretary. The petitioner nos. 1 & 2 have been promoted to the post of Under Secretary and the petitioner nos. 3 to 5

have been promoted to the post of Section Officer and they have been discharging their respective duties to the satisfaction of the higher officer. In

terms of Part VIII of the Bihar Reorganization Act, 2000, the Home (Special) Department, Govt. of Bihar was declared as Nodal Agency for

bifurcation of cadres inter alia. In view of the matter different issues cropped up like representations for mutual transfer, single transfer etc and for

consideration for the same, the Department of Personnel & Training, Govt. of India vide letter dated 15.09.2004 issued instructions to the successor

States. In view of said letter dated 15.09.2004 of the Govt. of India, the Special Secretary, Home (Special) Department, Govt. of Bihar vide letter

dated 21.05.2005 wrote to the Chief Secretary, Jharkhand and informed the terms and conditions of mutual transfer of cadre division in the letter of Government of India. In the said letter dated 21.05.2005, there was no whisper about the seniority of the employees after mutual transfer. By way of letter dated 08.06.2006, Government of India again reiterated the same view and communicated to the Chief Secretary, Government of Jharkhand and Government of Bihar with regard to mutual transfer by respective states. Proposal was sent by the Government of Jharkhand to the State of Bihar with respect to the person who gets his cadre division upon mutual transfer will lose his seniority in his respective cadre in the transferred State. The Government of Jharkhand by letter dated 19.07.2008 communicated to the State of Bihar to the fact that where a person is transferred from one cadre to another on his own request he loses his seniority and he is placed at the bottom of the cadre where he has been transferred on his own will. The Government of Bihar vide letter dated 03.02.2009 communicated to the Chief Secretary, Government of Jharkhand informed that the claim of seniority of mutual transferred employee cannot be entertained and he will be junior most in his cadre in the appointing year. One Rajendra Pratap Sinha, who was in State Administrative Service on the post of Deputy Secretary/ Additional Collector, at the last in the seniority list of his cadre in the appointing year. The said Rajendra Pratap Sinha challenged the seniority list before this Court in W.P.(S) No. 3844 of 2008 and the same was allowed vide order dated 26.02.2009 observing therein that the petitioner is entitled to claim his seniority on the basis of the original gradation list. A similar case was again decided by this Court in W.P.(S) No. 1068 of 2008 vide order dated 01.07.2009. In the light of aforesaid judgment of this Court dated 26.02.2009 the State of Jharkhand withdrew its decision by cancelling aforementioned letter no. 4450 dated 19.07.2008 about losing of seniority in case of mutual transfer vide letter dated 29.08.2009 and communicated to the Government of Bihar. The Government of Bihar vide letter dated 17.12.2009 communicated to the Chief Secretary, Jharkhand, intimated the decision with respect to the losing of the seniority in the cadre in the appointing year upon single transfer after final cadre allocation. The said decision of the Nodal Agency was accepted by the State of Jharkhand and circulated in the State of Jharkhand vide letter dated 30.12.2009 issued by the Personnel, Administrative Reforms and Rajbhasa Department,

Government of Jharkhand. Other departments were directed by the Government of Jharkhand to implement the direction of the Nodal Agency,

however the same has not been implemented in the case of Jharkhand Secretariat Services. One Mr. Ashesh Kumar Choudhary, Assistant

Commissioner, Commercial Taxes who got his cadre allocation in the Jharkhand upon his request after final cadre allocation (Single transfer case) has

lost his seniority, as information sought by the petitioner through Right to Information Act. The judgment dated 01.07.2009 passed in W.P.(S) No. 1068

of 2008 was challenged before the Division Bench in L.P.A. No. 511 of 2009 and the appeal was allowed by the Division Bench which was

challenged by the State of Bihar and the impugned order and judgment passed by the Single Judge was set aside. Thus, in view of that the seniority

relating to cadre revision upon mutual transfer shall not be admissible. In view of judgement rendered by the Division Bench, the Nodal Agency

revived its earlier decision contained in letter no. 277 dated 03.02.2009 whereby in the case of mutual transfer, the seniority is gone concept was

brought into. The said letter dated 11.03.2016 has also been communicated to the State of Jharkhand. The State of Bihar preferred Review Petition

being Civil Review No. 112 of 2009 which was disposed of vide order dated 15.02.2019 giving liberty to the Review Petitioner to approach the L.P.A.

Court. The State of Bihar preferred appeal bearing L.P.A. No. 511 of 2019 against the order dated 26.02.2009 passed in Rajendra Pratap Sinha case.

Petitioners tried to obtain the name of persons who have been transferred to the State of Jharkhand upon mutual or single transfer after final cadre

allocation. The petitioners came to know that 23 persons have been transferred to the Bihar Secretariat Service from the Jharkhand Secretariat

Service, upon mutual transfer meaning thereby 23 persons of Bihar Secretariat Service have come to Jharkhand Secretariat Service upon mutual

transfer and they have still getting the benefits of original seniority, although they should have been put at the bottom of gradation list in their appointing

year cadre. Several representations have been filed contained as Annexure-21 to the writ petition.

5. Mr. Ajit Kumar, learned senior counsel appearing for the petitioners assailed the impugned order on the ground that in view of the provisions of

Section 72 and 73 of the Bihar Reorganization Act, the Government of India denuded of jurisdiction to impose or propose any condition of service

upon any class or employee or employees after the final allocation of cadre takes place. He submitted that after allocation of cadre/services of the employees amongst the successor states, it was supposed to be decided by both the states i.e successor Bihar and Jharkhand to take a consensus decision which has already been taken, thus the State of Jharkhand cannot now take a varied stand which is opposed to their own proposal made to the nodal department with respect to the loss of seniority of the employees whose allocation is revised on their request or on mutual request. He submitted that the decision of the Government of Bihar and his nodal agency and in view of Annexure -5, Annexure-7 and Annexure-14 its decision was binding upon the State of Jharkhand and the respondent Jharkhand Government cannot take contrary stand. He submitted that the nodal agency and the Bihar Reorganization High Level Committee have taken the decision that the persons concerned shall have to lose their seniority in case of mutual transfer as well as in case of single transfer, thus in view of the judgment in L.P.A. No. 511 of 2009, the Government of Jharkhand is bound to recall Annexure-10 of the writ petition and implement the directives issued vide Annexure-11 and Annexure-14 to the writ application. He further submitted that by way para 22 and 23 of the judgment passed in L.P.A. No. 511 of 2009, loss of seniority in case of mutual transfer has been discussed in those paragraphs. He submitted that the said judgement dated 22.04.2014 was challenged by the State of Jharkhand in the Civil Review No. 85/2015 on the ground that they have not been made party respondent in the said appeal and the said review petition has been dismissed vide order dated 19.02.2016. On these grounds, learned senior counsel for the petitioners submitted that the case of the petitioners is fit to be considered.

6. Mr. Diwakar Upadhyay, learned counsel appearing for the respondent-State of Bihar submitted that judgment in L.P.A. No. 511 of 2009 it has been held that the employees who have opted for mutual transfer and lost their seniority have no protection under the proviso of Section 73 of the Bihar Reorganization Act or any provision of law.

7. Mr. Rakesh Kumar Shahi, learned counsel appearing for the respondent-State of Jharkhand submitted that so far as decision in L.P.A. No. 511 of 2009 is concerned, the same has been obtained by the appellant- State of Bihar by placing wrong facts before this Court. He further submitted that

letter dated 15.09.2004 of the Govt. of India and letters dated 21.05.2005 read with letter dated 08.11.2006 of the Government of Bihar as well as

letters dated 01.07.2005 and 08.02.2007 of the Government of Jharkhand, there was no consensus between the State Governments on the point of loss

of seniority of the State Service Personnel seeking mutual transfer. Therefore, any such decision taken by the Government of Bihar unilaterally shall

be against the letter dated 15.09.2004. issued by the Government of India.

8. In view of above facts and entire submissions of the learned counsel for the parties, the Court proceeded to examine the documents to come to

correct decision. The letter dated 15.09.2004 of the Government of India stipulates about mutual transfer which reads as under:-

Mutual Transfer Cases:-

A large number of representations have been received from personnel requesting for consideration of their mutual transfer with another consenting

State Service personnel. Since, the Central Government has already issued final allocation orders, it finds no reason to entertain such requests.

However, it is open to the successor State Governments to consider requests of mutual transfer based on broad consensus arrived between the State

Government inter alia either defining the terms and conditions for such consideration or by framing suitable rules for this purpose.

9. By letter dated 21.12.2006, the Government of Jharkhand communicated to the State of Bihar in view of Clause 3(iii) that persons who will opt to

come to a particular State of his choice will lose the seniority. By letter dated 03.02.2009 of the Government of Bihar which was issued pursuant to

High Level Committee submitted under Bihar Reorganization Act and the said High Level Committee on discussion came to the conclusion that on

mutual transfer the persons will lose the seniority. The Division Bench in para 22 and 23 of the judgment passed in L.P.A. No. 511 of 2009 has held

as under :-

22. The decision of the Nodal Agency that is, Home (Special) Department is binding on both the States and in fact the State of Jharkhand has filed

counter-affidavit stating that the conditions imposed by order dated 05.12.2007 cannot be changed unilaterally by the Road Construction Department,

Government of Jharkhand. The appellant has also taken a plea that the State Reorganization High Level Committee in its meeting dated 27.06.2007

felt that if the condition in the cadre re-allocation orders stipulating loss of seniority are relaxed, it would adversely affect the morale of those employees who obeyed the order of the Govt. of India and joined their allocated successor States and it was decided that the employees seeking cadre reallocation should be subjected to the condition that they would not claim seniority as per the final gradation list. It is submitted by the counsel appearing for the appellant that in view of order passed in ""Rajendra Pratap Sinha"" (supra), the Patna High Court has also granted interim protection to several employees and therefore, the issue involved in the present case required to be decided by this Court. For the aforesaid reasons we find no substance in the contention that since the State of Jharkhand has chosen to implement the order passed by this Court in ""Rajendra Pratap Sinha (supra), no interference is required in the present case. The State of Jharkhand after communicating its consent vide letter dated 21.12.2006 could not have chosen to implement the judgment in ""Rajendra Pratap Sinha (supra), as it would amount to withdrawing its consent unilaterally. We further find that in ""Rajendra Pratap Sinha (supra), the appellant herein was not made a party and thus, the decision in the said case was rendered in the absence of the appellant herein, and therefore, the writ petition preferred by respondent no. 1 herein could not have been allowed following the judgment in Rajendra Pratap Sinha (supra), since we have held that the protection under section 73 of the Bihar Reorganization Act, 2000 is not available to the employees seeking mutual transfer, we do not accept the plea of the respondent no. 1 that till the final decision in Review Petition No. 112 of 2009, the hearing of the present Letters Patent Appeal is adjourned.

23. In the result, we hold that the condition stipulated in order dated 05.12.2007 is binding on the respondent no. 1 and other employees and the protection under proviso to section 73 of the Bihar Reorganization Act is not available to the employees seeking mutual transfer. The impugned order dated 01.07.2009 passed by the learned Single Judge suffers from serious infirmities and accordingly, we set aside the impugned order dated 01.07.2009. Consequently the Letters Patent Appeal stands allowed.

10. Thereafter, the Government of Bihar in view of order of Division Bench passed in L.P.A. No. 511 of 2009 stayed the direction issued vide letter dated 19.09.2011 and directed that the persons on mutual transfer to the other

State they will lose their seniority and they will be treated junior most.

In the High Level Committee constituted under the Bihar Reorganization Act it was decided that the persons on mutual transfer shall lose their

seniority as contained in Annexure 7 dated 03.02.2009. The Division Bench judgment in L.P.A. No. 511 of 2009 is very clear as indicated in para 22

& 23 of the said judgment and by letter dated 11.03.2016 contained in Annexure-14, the Nodal Agency under the said Act has passed order

considering the judgment passed by the Division Bench in L.P.A. No. 511 of 2009 whereby stayed the direction issued in letter dated 19.09.2011 and

directed that on mutual transfer, the persons will lose their seniority and will be treated junior most in the said cadre. Thus grievance of the petitioners

are covered by way of those documents. The State of Jharkhand has not been able to distinguish this fact either in the counter-affidavit or by way of

argument. The Court came to the conclusion that there is no impediment in implementing decision of the Nodal Agency i.e. Government of Bihar in

view of letter no. 277 dated 03.02.2009 contained in Annexure-7, letter no. 10458 dated 17.12.2009 contained in Annexure-11 and letter dated

11.03.2016 contained in Annexure-14.

11. In view of the cumulative effects of the discussions made above, the writ petition succeeds.

12. In view of the statement made in para no. 40 of the writ petition that several representations have been made and no decision has been taken as

yet by the State of Jharkhand, this writ petition is being disposed of with direction to the State of Jharkhand to consider the case of the petitioners in

the light of discussions made here-in-above and pass the appropriate reasoned order within a period of 12 weeks from the date of receipt/production

of a copy of this order.

13. It goes without saying that the State of Jharkhand in case of not accepting the admitted fact as discussed here-in-above, shall give the specific

reason why the judgment of the Division Bench and the decision of the High Level Committee shall not be implemented by the State of Jharkhand.

14. With the above observations and directions, the writ petition stands allowed and disposed of. Pending I.A., if any, stands disposed of.