
(2009) 11 JH CK 0004
Jharkhand High Court
Case No: None

Dinesh Chandra Singh		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision: Nov. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: J.C.S. Rawat, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

J.C.S. Rawat, J.

This writ application has been filed under Article 226 of the Constitution of India by the petitioner for the following relief(s);

(a) To issue an appropriate writ including a writ in the nature of certiorari for quashing the Notification No. 1856 dated 13.10.08 and order dated 14.10.08 whereby and whereunder the petitioner services has been returned back to BISCOMAUN, Patna and the petitioner has been relieved w.e.f. 13.10.08 from the Government Polytechnic, Ranchi.

(b) To issue an appropriate writ including a writ in the nature of mandamus commanding the respondents to absorb the services of the petitioner as lecturer in Govt. Polytechnic College, Ranchi in the Science and Technology Department or in the Science and Technology Department, Govt. of Jharkhand.

(c) To grant of such other reliefs as the petitioner deemed to be entitled.

2. In nutshell, the petitioner's case is that the petitioner was appointed as an Assistant Engineer in BISCOMAUN, the then State of Bihar and in a high level meeting reviewed the recommendation made by the previous Development Commissioner on different point to overcome the crisis of BISCOMAUN and thus a

detailed report for rehabilitation of BISCOMAUN was prepared and the Joint Secretary, Govt. of Bihar requested the Managing Director, BISCOMAUN to declare the staff surplus to meet the financial crunch of respondent No. 8. It was decided to send the staff for appointment with respondent No. 6 to the different Government Departments. In pursuance to that, a letter was also received to the Government Polytechnic, Ranchi and the Govt. Polytechnic Ranchi also sent a requisition for the post of Lecturer along with other posts on deputation to the respondent No. 6. The petitioner, pursuant to the said letter applied in the Govt. Polytechnic Ranchi as lecturer in Civil Engineering and he was selected for deputation in the said Polytechnic as Lecturer in the year 1994 and the services of the petitioner was taken by the Govt. Polytechnic, Ranchi. Many other employees of different categories were also sent to the different departments of the Government. The petitioner had continued for a long time in the Govt. Polytechnic, Ranchi as lecturer. Now the Government of Bihar has decided to send back the petitioner to the parent department. Similarly situated persons, Ramashraya Singh and others were deputed in the Science and Technology Department from the Corporation and the department on the ground of apprehended technical objection of Indian Council of Technical Education has refused to permanently absorb them. However, a writ petitioner was allowed by the High Court of Patna, Bihar. Thereafter, a writ petition was filed by the petitioner before the Patna High Court, which was numbered as CWJC No. 7642 of 2000 before the Court for seeking the relief of absorption along with the other relief(s). In the said writ petition, the Hon"ble Patna High Court by interim order dated 17.8.2000 restrained the respondents from repatriating the petitioner back to the respondent No. 6 with further observation that in the meantime, it would be open to the respondents to absorb the petitioner in the service of the State. Thereafter, the State of Jharkhand was carved out from the State of Bihar by virtue of Bihar Reorganization Act, 2000. The said writ petition was heard by the Patna High Court and on 26.7.2006 and the same was dismissed with observation that in case the parent department of the petitioners" i.e. respondent No. 6 is liquidated, the petitioners may move the appropriate Government for their absorption in any of the Department of the State of Bihar in accordance with law. Against the said order, an appeal being LPA No. 620/06 was preferred before the Patna High Court and by order dated 5.9.08 the said LPA was disposed of on the ground that the LPA is not maintainable and it will be open to the appellant to raise his grievance, if any, before the Jharkhand High Court, Ranchi. Thereafter, this writ petition has been preferred by the petitioner before this Court.

3. I heard the learned Counsel for the parties and perused the record.

4. The petitioner has filed the copies of the judgments of Patna High Court of different writ petitions of the petitioner or other similarly situated persons, out of which, some of the writ petitions were allowed and against which, the L.P.As. are pending and some of the writ petitions were dismissed and L.P.As. are pending before Patna High Court.

5. The learned Counsel for the petitioner contended that the petitioner's services were taken on deputation in the year 1994 and he was not absorbed in the Govt. Polytechnic Ranchi and he cannot be repatriated after a period of 14 years to the parent Department. He further contended that the petitioner was declared surplus by respondent No. 6 due to financial crunch in the department and therefore, his services were taken by the Govt. Polytechnic, Ranchi and he was taken as lecturer after holding the test. Thereafter, he was given appointment on Deputation. The learned Counsel further contended that the petitioner's repatriation to his parent department would amount to the termination of his services from the Department.

6. Learned Counsels appearing on behalf of the respondent-State of Jharkhand as well as the State of Bihar have refuted the contentions advanced by the learned Counsel for the petitioner and contended that the services of the petitioner were taken only on deputation and a person who is on deputation can be repatriated at any time in his parent department.

7. Now the question which arises for consideration in this case is that if a person has been appointed in one department and his services shall be borrowed by the other department and he has been appointed in the said department on deputation for a long time and can he be repatriated to the parent department or not?

8. In the instant case as apparent from the record, it is revealed that the petitioner apprehended repatriation to the parent department; he filed the writ petition being CWJC No. 7642 of 2000 before Patna High Court for absorption in the Government Polytechnic Ranchi and for other reliefs. In that writ petition, the court passed an interim order in the year 2000 restraining the respondents from repatriating him back to respondent No. 6, BISCOMAUN and the said writ petitioner was dismissed and thereafter LPA was preferred against that and in that LPA it was ordered that after the reorganization of the State of Jharkhand, Ranchi, where the petitioner has been deputed comes within the jurisdiction of Jharkhand High Court and the petitioner may move to the High Court of Jharkhand for redressal of his grievances. Thus the respondents were restrained to pass any order of repatriation to the respondent No. 6. Thus the State of Bihar would not pass such order of repatriation during the pendency of the said litigation. Thus the petitioner had an apprehension in the year 2000 to be repatriated in the Government Polytechnic Ranchi so he obtained an interim order of not being repatriated and under the garb of this order, the Government could not repatriate him to the parent department.

9. From the pleadings of the parties, it is clear that the petitioner was sent on deputation in a different department of the State of Bihar and now the State of Jharkhand has directed by the impugned order for the repatriation of the petitioner in the parent department. The State of Jharkhand is competent to send him to his parent department. This fact was in dispute before me.

10. Admittedly, the petitioner was on deputation but till date no decision has been taken to absorb him permanently on the ground of in viability of respondent No. 6, the petitioner, in that view of the matter, do not have indefeasible right to continue on deputation. It is true that the petitioner has been sent on the recommendation made by the High Level Committee by the then State of Bihar and services of the petitioner was taken by the respondent-Govt. Polytechnic, Ranchi in the year 1994. It is also not in dispute that the services has not been absorbed and the question as to whether respondent No. 6 is viable or not is altogether a different question but it cannot be a ground for its employees to continue on deputation in other departments, in which, they have been sent in deputation. It cannot be concluded that the petitioner has right to continue even he has served more than three years in the department on deputation. The petitioner has also sought the prayer to get him absorbed in the services of the Govt. Polytechnic Ranchi as I have pointed out that the petitioner has no right to continue in the said service and thus this prayer of the petitioner regarding the absorption is devoid of merit.

11. In view of the above, I do not find any reason that the petitioner should be remained posted and absorbed as a Lecturer in the Government Polytechnic, Ranchi and the order impugned is not liable to be quashed.

12. Accordingly, this writ petition is dismissed in limine. No order as to costs.