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**(2010) 03 JH CK 0046**

**Jharkhand High Court**

**Case No:** None

Umesh Prasad and Amit Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** March 10, 2010

**Acts Referred:**

- Bihar Reorganisation Act, 2000 - Section 75, 76

**Hon'ble Judges:** Sushil Harkauli, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Sushil Harkauli, J.

I have heard both the sides.

2. Both the petitioners of this writ petition are challenging their allocation to the Bihar cadre consequent upon bifurcation of the erstwhile unified Bihar State into the two states, namely Bihar and Jharkhand.

3. The allocation of the employees of then existing Bihar cadre into the two service cadres, namely the Bihar cadre and the Jharkhand cadre is governed by the Bihar re-organization Act, 2000. The relevant provisions which have been relied upon from the petitioner's side are Sections 75 and 76 of the Act which provide for constitution of Advisory Committees in accordance with the directions given by the Central Government.

4. The guidelines given by the Central Government u/s 76 have been enclosed with the supplementary affidavit filed by the petitioner.

5. It was argued that the Chief Secretary of the State of Jharkhand was not consulted, as required by the guidelines, while constituting the Advisory Committee, as a result of which the constitution of the Advisory Committee, being not valid in law, vitiate the decision taken by such committee with regard to allocation of cadres.

6. On 01.12.2009 when this matter was heard earlier, the following order was passed. "The petitioner may examine the matter as to whether the alleged deficiency in the appointment of Chairman of the Advisory Committee constituted u/s 75 of the Bihar Reorganisation Act, 2000 is an illegality or a mere irregularity, not affecting the validity of the proceeding or the advice given by the Advisory Committee, and liable to be ignored, and in any case, not clothing the petitioner with a right to challenge the allocation of the petitioner to the Bihar cadre. The appointment of a Chairman with the consent of the State Government is not a precondition prescribed by the statute and therefore, prima-facie, it would not be a case of an illegality of a nature which would vitiate the entire proceeding."

7. During the arguments today the contents of paragraph No. 24 and 25 of the writ petition were relied upon in support of the factual aspect of the submission referred to above.

8. These paragraphs refer to the letter of the Chief Secretary, Jharkhand enclosed as annexure 6 to this writ petition. Annexure 6 and Annexure 7 have also been relied upon by the petitioners' side.

9. Unfortunately, none of these two annexures give any indication that there was any objection ever with regard to the constitution of the Advisory Committee. The objection was with regard to the manner of allocation of the serving personnel to the cadres of Bihar and Jharkhand. Thus the first ground fails on both the counts, i.e. the factual count about the lack of consultation, as well as on the count that even if such an error had been there, it would be a mere irregularity and not an illegality affecting the validity of the proceedings or of the advice given by the Advisory Committee.

10. The other ground on which the petitioners challenged their allocation to the State of Bihar is mentioned in paragraph 30 of the writ petition wherein it has been stated that the Advisory Committee failed to consider the representation of the petitioners against their tentative allocation to Bihar cadre.

11. However, I find from the counter affidavit of the respondent No. 6 filed on 18.05.2006 by Ram Ekbal Sharma, Deputy Secretary of the Advisory Committee set up by the Central Government, that the detailed procedure and criteria adopted by the Advisory Committee have been mentioned in paragraph 9 of the counter affidavit and in paragraph 20 (VII) it has been stated that the representations of the petitioners were considered on one to one exchange basis in the same reservation category and that the representations could not succeed on this basis because of lack of candidates seeking change from Jharkhand to Bihar. It has also been stated in the same paragraph that not only the petitioners' but the representations of more than 20 others senior to the petitioners could not succeed for the same reason. Moreover, the grounds given by the petitioners for avoiding allocation of Bihar cadre are also mentioned in paragraph 20 (IV) and paragraph 20 (V). Both

these paragraphs contain grounds personal to the two petitioners. The grounds are largely a matter of personal convenience and choice except a ground relating to the petitioner No. 2, which indicates that the petitioner No. 2 had suffered a paralytic stroke resulting in partial disability. Neither the date of stroke nor the extent of disability have been highlighted.

12. Government servants are appointed and employed for public service. It is obvious that while allocating cadres in case of bifurcation of states, just like in case of transfers, the personal convenience of the employees can and should be taken into account, but subject to the over all limitation of the exigencies of Public service. Every employee can not always be accommodated either in the matter of transfer or in the matter of compulsory allocation between the two state cadres.

13. The writ Court can not take the personal conveniences into account to over ride the decisions of the Advisory Committee or the Central Government.

14. Accordingly, I do not find any merit in this petition, which is dismissed.