

Asit Kumar Mukherjee and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Mar-15-1999

Judge : S.J. Mukhopadhaya, J.

Appeal No. : C.W.J.C. Nos. 1692, 1720, 2261 and 3169 of 1998 (R)

Appellant : Asit Kumar Mukherjee and ors.

Respondent : The State of Bihar and ors.

Disposition : Petition Dismissed

Judgement :

S.J. Mukhopadhaya, J.

1. In all the cases, as common point of law is involved, they were heard together and are being disposed of by this common order.

2. The case relates to transfer and posting within the area of Santhal Pargana and Chotanagpur (commonly known as Jharkhand area). The parties have challenged the jurisdiction of one or other authority i.e. State of Bihar or Jharkhand Area Autonomous Council (JAAC).

The main question raised for determination is as to whether State of Bihar has jurisdiction to transfer or to post a Gazetted officer within Jharkhand area or such power is vested with the JAAC?

3. To determine the aforesaid question, it is necessary to take into consideration the relevant facts as well as individual cases of petitioners, as mentioned hereunder:

The State of Bihar promulgated 'Jharkhand Area Autonomous Council Act, 1994' (Bihar Act 13 of 1994) and constituted JAAC for all-round accelerated development of the Jharkhand area which came into effect on 8th March, 1995 when the Act was published in Bihar Gazette (extra-ordinary).

Admittedly, the employees, including gazetted officers of different departments of State of Bihar including Health Department; Road Construction Departments ; P.H.E.D. ; Forest and Environment Department ; Education Department, etc. are posted in the Jharkhand area in their respective offices of whom the State of Bihar is the appointing and controlling authority. In pursuance of aforesaid Act, 1994, while the State of Bihar Constituted the JAAC, delegated certain powers to it for all-round accelerated development of the Jharkhand area. Under Section 32 of the said Act, while personnel and Administrative Powers was delegated to the JAAC, under Sub-section 2 to Section 32 powers connected in respect to the personnel posted within Jharkhand area was delegated.

The aforesaid Sub-section 2 to Section 32 of the Act, reads as follows:

32. Personnel and Administrative Powers of the Council.

(a) ** ** ** **

(2) The Council shall have the following full powers connected with respect to the personnel posted in the area of the Council on the Subjects specified in Schedule 3.

(a) Subject to the policy of the State Government, to make transfer and posting of the gazetted officers wholly connected with specified subjects whose services have been placed by the State Government to the Council ;

(b) The Council may create posts of class three and class four wholly connected with specified subjects and make appointments thereon ;

Provided that such post within the yardstick and budget provisions determined by the State Government, may be created and appointment to such posts may be made in accordance with the policy and procedure prescribed by the State Government;

(c) Supervision, direction and guidance of gazetted officers and not gazetted employees who have been assigned to execute subjects specified in Schedule 3 ;

(d) The appropriate authority of the Council shall, subject to the rule, regulation and procedure of the State Government, initiate evaluation report with respect to be officers connected wholly with specified subjects of the Area;

(e) The Council may impose minor punishments to non-gazetted employees connected wholly with specified subject ; and

(f) The Council may recommend disciplinary action in respect of officers wholly connected with the specified subjects and the State Government shall ordinarily within three months communicate its decision on the recommendation to the Council.

3. After constitution of JAAC, Planning and Development Department of Government of Bihar issued a letter No. 1785 dated 14.7.1997 whereby and whereunder giving references of Section 32(2) Secretaries of different departments were asked to forward the list of gazetted officers of their respective Departments for placement of their services under the control of the JAAC.

4. The Commissioner cum-Secretary of the Forest and Environment Department by his letter No. 2734 dated 15.7.97 while intimated the Regional Development Commissioner, Ranchi and Principal Chief Conservator of Forest, Ranchi decision of the State to place the services of officers of Bihar Forest Service (Assistant Conservator of Forests) and Range Officers of Forest, under the control of JAAC, he specifically intimated that the list of such employees will be forwarded to the JAAC.

The Welfare Department of the State of Bihar issued one Notification No. 3934 on 15.7.97 whereby services of gazetted officers already posted within Jharkhand Area were placed under disposal of JAAC.

5. While the first three cases of Asit Kumar Mukherjee (C.W.J.C. No. 1720/98 (R) ; GorakhNath Yadav (C.W.J.C. No. 169/98 (R)) and Sushil Oraon (C.W.J.C. No. 2261/98(R) relate to range officers of Forests of the Forest and Environment Departments of the State of Bihar, the other case of Sanjay Kumar Thakur (C.W.J.C. No. 3169/98 (R) relates to Welfare Department of the State.

According to the petitioners, Asit Kumar Mukherjee, Gorakh Nath Yadav and Sushil Oraon, their services along with their contesting respondents have been placed under JAAC vide letter No. 5342 dated 24.11.97 for their posting in the Jharkhand Area, but respondents have disputed such fact.

However, the stand of petitioner Sanjay Kumar Thakur that his service has been placed under the JAAC vide notification of Welfare Department No. 3934 dated 15.7.97 has not been disputed by respondents.

C.W.J.C. No. 1720 of 1998 (R) Asit Kumar Mukherjee v. State of Bihar and Ors.

6. The petitioner, Asit Kumar Mukherje was posted as Range Officer of Forest at Muta Magar Projanan Kendra, Ranchi Bannya Prani Promandal. The respondent Gopal Prasad Gupta of the said case was posted as Range Officer of Forest in the Timber Depot Chetra, Ranchi Purbi Ban Promandal. The JAAC issued one notification on 15.4.98 whereby respondent-Gopal Prasad Gupta was transferred to Gumla Ban Promandal and in his place, petitioner-Asit Kumar Mukherjee was posted at Timber Depot Chetra, Ranchi. Petitioner joined the post at Timber Depot Chetfa, Ranchi on 16.4.98 in terms with JAAC's notification dated 15.4.98 but the respondent-Gopal Prasad Gupta did not hand over the charge to him. The petitioner when complained to the higher authority in this respect on 24.4.98 followed by his letter dated 30.4.98, one or other officer of the Forest and Environment Department wrote letters on 2.5.98, 22.5.98 followed by reminders dated 23.5.98, 29.5.98 and 4.6.98 and ordered to take step for giving charge to petitioner Asit Kumar Mukherjee of the post at Timber Depot Chetra, Ranchi. Subsequently, the JAAC issued one order vide letter dated 18.6.98 staying such orders which were issued without the approval of the Chairman of the JAAC but it was subsequently vacated.

The question relating to transfer and posting made by JAAC in respect of one or other gazetted officer of Forest and Environment Department of the State of Bihar came to the notice of the State. The Principal, Chief Conservator of Forest, Ranchi vide his letter dated 20.6.98 while brought to the notice of the Commissioner-cum-Secretary, Forest & Environment Department Patna and Regional Development Commissioner, Ranchi the aforesaid fact, informed that the list of officers have been forwarded by letter No. 5342 dated 24.11.97 but the services of such officers have not yet been placed by the State under the Control of JAAC. In spite of the same, different orders of transfer and posting is being issued by JAAC in respect of such officers. Subsequently, No. specific clarification was made by the State and ultimately a notification no 2675 was issued on 30.6.98, by the State under the order of Governor, Bihar whereby and whereunder respondent Gorakh Ram was posted at Timber Depot Range, Ranchi and respondent-Gopal Prasad Gupta was transferred to Dumka Ban Promandal.

For the reasons aforesaid, while the petitioner-Asit Kumar Mukherjee impleaded Gorakh Ram as respondent No. 11 apart from respondent No. 10 Gopal Prasad Gupta, also prayed for direction on the respondents to give him the charge of the post of Range Officer of Forest, Timber Depot Chetra, Ranchi.

C.W.J.C. No. 1692 of 1998 (R) Gorakh Nath Yadav v. State of Bihar and Ors.

Petitioner Gorakh Nath Yadav was functioning as Range Officer of Forest at Daltonganj Uttari Ban Promandal, Chattarpur East. The JAAC issued one notification No. 8 on 19.3.98 whereby and whereunder he was transferred and posted at Hazaribagh Ban Ropan Promandal, Hazaribagh. In pursuance of notification of JAAC dated 19.3.98, petitioner Gorakh Nath Yadav gave joining at Hazaribagh on 27.3.98 and requested to higher officers on 10.6.98 to take step to give charge of the post at Hazaribagh.

Before taking over such charge, the State of Bihar issued one notification No. 2305 on 8.6.98, by the order of Governor, Bihar and posted the contesting respondent-Kanhwiya Prasad in the Hazaribagh Ban Ropan Promandal at Hazaribagh where petitioner was earlier posted by JAAC's notification dated 19.3.98.

For the reasons aforesaid, while the petitioner has challenged the notification dated 8.6.98 so far as respondent Kanhwiya Prasad is concerned, has also prayed for direction on the respondents to make arrangement for handing over the charge of the post at Hazaribagh to him.

C.W.J.C. No. 2261 of 1998 (R) Sushil Oraon v. State of Bihar and Ors.

Petitioner Sushil Oraon was functioning as Range Officer of Forest at Ranchi Sahari Depot Chetra, Ranchi Byapar Promandal, Ranchi. He was transferred vide JAAC's notification No. 44 dated 30.12.97 at Khunti Ban Chetra, Ranchi Ban Promandal. In pursuance of aforesaid notification issued by JAAC, petitioner Sushil Oraon joined at Khunti on 1.1.98 but was not given charge by one Sri Muna Ram Manjhi, who was posted there. One or other letter was issued by the officers of Forest Department, including letters dated 15.4.98, 19.6.98, 2.7.98 etc. whereby it was ordered to relieve Nuna Ram Manjhi. As the petitioner was relieved from earlier post on 19.6.98, it was requested to give charge of the post at Khunti to petitioner-Sushil Oraon. Ultimately, Nuna Ram Manjhi handed over charge to Petitioner-Sushil Oraon on 6.8.98.

In the meantime, State of Bihar issued a Notification No. 2675 on 30.6.98, by the order of Governor, Bihar and posted the respondent-Anil Kumar Singh at Khunti where petitioner was earlier posted vide JAAC's notification dated 30.12.97.

For the reasons aforesaid, while the petitioner has challenged the jurisdiction of the State of Bihar in the matter of posting of respondent-Anil Kumar Singh, has also prayed for direction on the respondents to Act in terms with JAAC's notification dated 30.12.97.

7. From the facts of the aforesaid three writ petitions, as stated above, it will be evident that while petitioners have been posted against one or other post vide notifications issued by JAAC, the contesting respondents have been posted against same very posts vide one or other notification issued by the State of Bihar.

According to the Counsel for the petitioners, the State has no jurisdiction to post one or other gazetted officer against the posts which have already been filled up

by JAAC ; the State of Bihar cannot transfer one or other gazetted officer including the petitioners or the contesting respondents, whose services have already been placed under the JAAC.

Admittedly, the State of Bihar is the appointing authority of the petitioners and contesting respondents, who are members of one or other service/cadre of the State of Bihar. The posts against which one or other petitioner or the contesting respondents have been posted, such posts have been created by the State of Bihar.

It is not in dispute that the power of transfer and posting of one or other gazetted officer of the State whose services have been placed under the JAAC have been delegated to JAAC under Section 32(2) of the Act, 1994, in the projects connected with specified subjects as shown at Schedule 3 of the Act.

8. From the facts admitted, the provisions of the JAAC Act, 1994 and the laws laid down by the State (Bihar Service Code), the following facts emerges:

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 officer from the post to other post (vide 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, under Section 32(2) of the Act, 1994 to place the services of the gazetted officers under the disposal of JAAC, who are connected with the departments/projects as shown at Schedule 3 of the Act.

The JAAC has jurisdiction, under Section 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 guide lines laid down by the State, only against a clear vacant post and not otherwise. Such posting can only be made within the 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 officers. 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 its by the State.

Even after delegation of power under Section 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 the 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 officers who remain under their respective control.

9. So far as petitioners Asit Kumar Mukherjee ; Gorakh Nath Yadav and Sushil Oraon are concerned, according to them, their services, along with some of the contesting respondents of their cases were placed by the State Government under the control of the JAAC vide order contained in letter No. 5342 dated 24.11.97. Their respective Counsel gave much stressed on the aforesaid letter dated 24.11.97 to impress the Court that after placement of their services under the JAAC, the State had no control over them in the matter of transfer and posting, till their services are recalled under the control of State of Bihar. It was also submitted that their orders of posting having issued earlier by different notifications of the JAAC, the State had no jurisdiction to post one or other contesting respondent, there being no vacant post. However, the aforesaid submission cannot be accepted as the letter No. 5342 dated 24.11.97 cannot be construed to be an order or notification of placement of one or other gazetted officer of the Forest and Environment Department of the State under the disposal of JAAC in terms with

Section 32(2) of the Act. It is only with a view to come out with such order/notification under Section 32(2) of the Act for placement of services of one or other officer under the JAAC request made by Forest Department's letter No. 2734 dated 15.7.97 and merely the list of such officers was forwarded by one of State authority to the Commissioner-cum-Secretary of the Forest and Environment Department, Patna and not to the JAAC. No order or notification was issued by the State under the order of Governor of Bihar placing the services of one or other petitioner under the JAAC as was made in respect of one or other gazetted officer vide notification No. 2301 dated 6.6.98.

10. In the aforesaid circumstances, I hold that the JAAC had no jurisdiction to issue any notification of transfer and posting in respect of petitioners and contesting respondents as were issued on 30.12.97 ; 19.3.98 and 15.4.98 and such orders notifications are illegal, being without jurisdiction. For the same very reason, the notifications of posting issued by the State on 8.6.98 and 30.6.98, so far as contesting respondents are concerned, cannot be held to be illegal.

I thereby reject the prayer made in C.W.J.C. Nos. 1720/98(R), 1692/98(R) and 2261/98 (R).

11. However, as the petitioners, Asit Kumar Mukherjee, Gorakh Nath Yadav and Sushil Oraon have already been relieved from their earlier posts, the cases of all these three writ petitioners are remitted to the Commissioner-cum-Secretary of the Forest and Environment Department, Patna to take a decision in respect of them. Either their services be placed under the disposal of JAAC or the State will issue order(s) allowing them to re-join their respective posts where They were earlier posted or will issue a fresh notification(s) of posting, as the State feels proper.

A decision in this respect be taken and order/notification be issued within a period of thirty days from the date of receipt/production of a copy of this order.

C.W.J.C. No. 3169 of 1998(R) v. JAAC and Ors.

12. The petitioner Sanjay Kumar Thakur is a Child Development Project Officer of Welfare Department of State of Bihar. While he was posted at Chandi, the State of

Bihar came out with a notification on 30.6.96 posting one Ramesh Bhagat in his place without giving specific posting to the petitioner. For the said reason, he had to move before this Court in C.W.J.C. No. 2019/96 (R) when interim order was passed by this Court on 23.7.96. The State of Bihar thereafter posted petitioner Sanjay Kumar Thakur as Child Development Project Officer at Echagarh, West Singhbhum vide notification dated 30.6.97, to which post, the petitioner joined. Subsequently, the services of all the gazetted officers of Welfare Department, who were posted within Jharkhand Area, were placed under the control of JAAC vide Notification No. 3934 dated 15.7.97. The petitioner, who was already posted within the Jharkhand Area by State Government's notification dated 30.6.97, in respect of him a subsequent notification No. 779 was issued by JAAC on 30.6.98 whereby he was transferred from Echagarh to Potka in the district of East Singhbhum. In pursuance of such notification of JAAC dated 30.6.98, petitioner joined at Potka on 6.7.98 and is functioning against such post.

In the meantime, the State of Bihar came out with one Notification No. 1536 dated 30.4.98 whereby the petitioner was transferred from Echagarh to Sikti in the district of Araria. The petitioner had not given joining in pursuance of State Government Notification dated 3.4.98 and for the said reason, he has not been paid salary. Prayer has been made to direct the respondents to allow the petitioner to draw his salary due since February 1998 and also to allow him to function at Potka in pursuance of JAAC Notification dated 30.6.98.

According to the Counsel for the petitioner, the services of petitioner having been placed under the JAAC, the State had no jurisdiction to issue any notification of transfer and posting as was made vide notification No. 1536 dated 3.4.98.

13. From the facts aforesaid and enclosures attached to the writ petition, it will be evident that the Notification No. 3934 dated 15.7.97. the State of Bihar placed the services of all the Gazetted officers already posted in the Jharkhand Area, under the JAAC for a period of three years. The petitioner having been posted within Jharkhand Area by State Government's notification dated 30.6.97 i.e. much prior to issuance of notification dated 15.7.97, his Service stands transferred and placed under the JAAC for the period up to 14th July, 2000. Thereby, State of Bihar had

no jurisdiction to issue any notification of transfer and posting in respect of petitioner thereafter, as was made vide notification dated 3.4.98, without recalling the services of petitioner under the State. I thereby hold the Notification No. 1536 dated 3.4.98 issued by the State of Bihar, so far as petitioner-Sanjay Kumar Thakur is concerned, as illegal and uphold the Notification No. 779 dated 3.6.98 issued by JAAC.

14. Accordingly, the respondents are directed to allow the petitioner to function as Child Development Project Officer at Potka in pursuance of notification of JAAC dated 30.6.98, till the services of petitioner remains under the control of JAAC or till any notification of transfer is issued by the JAAC, whichever is earlier. The respondents are also directed to allow the petitioner to draw his salary which is legally due to him since 13th July, 1998 i.e. the date the petitioner joined the post at Potka.

So far as salary for the period from February, 1998 to 12th July, 1998 is concerned, the Secretary of the Welfare Department will decide the question as to how and from where the petitioner will draw such salary which is legally due to him, within a period of one month from the date of receipt/production of a copy of this order.

At this stage, I may observe that the State of Bihar as also the JAAC are required to deal the matter of transfer and posting of gazetted officers within the Jharkhand Area, in accordance with law and guideline issued by the State, to avoid conflicting orders of transfer and posting against one or other gazetted post in the project as shown under Schedule 3 of the Act. For the said reason, the State of Bihar is required to forward the orders/notifications to the JAAC showing the names of officers of concerned department whose services have already been placed and/or are being placed under the JAAC. Similarly, the JAAC before issuance of any order of transfer and posting of any gazetted officer of State should verify from their record as to whether services of such officers have been placed under the disposal of JAAC and whether the post against which the person is being posted is vacant or not. In case of chain transfer, the State and the JAAC are also required to verify as to whether the officer who is being replaced by any other officer, the

services of both such officers have been placed under the disposal of JAAC or not, to avoid controversy in future.

As the JAAC has been delegated with power for all-round accelerated development of Jharkhand area, as also supervisory power over such officers posted in the said area; the State Government, except for good exceptional reason should not come out with any specific order of posting in respect of one or other gazetted officer within Jharkhand area, without placing the services of such person under the JAAC or without consultation with the JAAC.

15. Accordingly, while I dismiss the writ petitions C.W.J.C. Nos. 1720/98 (R), 1692/98 (R) and 2261/98 (R), allow the writ petition C.W.J.C. No. 3169/98(R) with directions and observations as made above.

Later: 15.3.1999

Counsel for the petitioner pointed out the typographical error at para-11 to the order passed today (15.3.1999) and stated that Asit Kumar Mukherjee and Gorakh Nath Yadav were not relieved from the earlier posts, except Sushil Oraon. If so, the petitioners may bring the same to the notice of State authorities who are required to decide the. question of re-joining of petitioners in terms with order passed at para-11 to the order.

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