

Suresh Ram and Anr Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-31-2015

Appellant : Suresh Ram and Anr

Respondent : The State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 948 of 2014
.....

1. Suresh Ram

2. Sushil Kumar Ravi Petitioners -V e r s u s-

1. The State of Jharkhand

2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand

3. The Principal Secretary, Water Resources Development Department, Government of Jharkhand, Ranchi

4. The Joint Secretary, Water Resources Development Department, Government of Jharkhand, Ranchi

5. Deputy Secretary to Government, Water Resources Development Department, Government of Jharkhand, Ranchi

6. Arun Prakash

7. Sanjeev Kumar

8. Shyam Babu Das

9. Bhim Kumar

10. Prabhat Kumar

11. Birendra Kumar

12. Chandra Shekhar

13. Amarendra Kumar ... Respondents CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : - M/s V. K. Tiwary, Adv. For the Respondents : - Mr. Kr. Rahul Kamlesh, JC to SC-II ... 06/31.08.2015 Heard learned counsel for the parties. Petitioners are Assistant Engineer in Water Resources Department. They are aggrieved by the decision contained in letter no. 4772 of 14.08.2008 of the department of Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand whereunder in respect of reservation to the State services/cadres for different posts, it has also been held that those employees, who have joined State of Jharkhand pursuant to their allocation of cadre from the parent State and were enjoying the benefit of reservation in the parent State shall avail of the benefit of reservation in the successor State of Jharkhand also, though they belong to the successor State of Bihar. Learned counsel for the petitioners submits that declaration of caste or tribe as done under Articles 341 and 342 of the Constitution of India by the President of India applies to the territory of the State for which such declaration is made. Therefore, those, who belong to Scheduled Caste category in the parent State of Bihar and who are resident of territories falling under successor State of Bihar, should not have been granted benefit of reservation on their allocation to the successor State of Jharkhand pursuant to bifurcation of the State. Therefore, petitioners have assailed the aforesaid letter dated 14.08.2008 and also promotion granted to the private respondents by the respondent- Department treating them in the category of Scheduled Caste. Petitioners have relied upon the judgments

rendered by learned Division Bench of this Court in the case of Kavita Kumari Kandhw and Ors. Vs. State of Jharkhand & Ors. along with analogous cases vide judgment dated 01.05.2006, Annexure -1. Apart from that they have also relied upon the judgment rendered by learned Single Bench of this Court in the case of Nand Kumar Ram & Anr. and the State of Jharkhand and Ors. in W. P. (S) No. 6485 of 2007 vide judgment dated 27.05.2009, Annexure-7. Respondents have contested the claim of the petitioners by filing counter affidavit. It is, their contention that plea taken by the petitioners is not legally sustainable. Considering the submissions of the learned counsel for the rival parties, judgment at Annexure-1 does not apply to the facts of the present case as it relates to an exercise of fresh appointment made after bifurcation of parent State of Bihar in the successor State of Jharkhand where candidates were seeking benefit of reservation on the claim of their status as reserve category candidate in the parent State of Bihar. The case of the present petitioners or the private respondents are not of fresh appointment, but of allocation of serving employees to the successor State of Jharkhand on account of historical division of parent State of Bihar. The judgment at Annexure-7 does not lay down any preposition of law as it was only a direction to the respondent to come out with a concrete policy decision with regard to reservation. The contention of the petitioners on the face of it appears to be fallacious while being tested on legal preposition and also provisions of Bihar Reorganization Act, 2000. Section 2 (f) of the Act of 2000 defines law, which reads as under:-

2. Definitions.- In this Act, unless the context otherwise requires,- (f) law includes any enactment, ordinance, regulation, order by-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Bihar; Apart from that Section 73 of the Act under part-VIII provides as under:-

73. Other provisions relating to services:-(1) Nothing in Section 72 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State: Provided that the conditions of service applicable immediately before

the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand under Section 72 shall not be varied to his disadvantage except with the previous approval of the Central Government. (2) All services prior to the appointed day rendered by a person,- (a) if he is deemed to have been allocated to any State under Section 72, shall be deemed to have been rendered in connection with the affairs of that State: (b) if he is deemed to have been allocated to the Union in connection with the administration of the Jharkhand shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service. (3) The previous of Section 72, shall not apply in relation to members of any All India Service. The persons, who were serving in the parent State of Bihar and stood allocated by virtue of the exercise undertaken in terms of Section 72 of the Act, 2000, enjoy protection of the service conditions which operated on the appointed date and could not be altered to their disadvantage except with the previous approval of the Central Government. Private respondents were appointed in the Parent State of Bihar granting benefit of reservation as Scheduled Caste persons. The allocation of personnel serving the parent State of Bihar has been done under the provisions of Section 72 of the Act by a methodology prescribed by the Central Government on the basis of recommendation of the Advisory Committee constituted for the said purposes in terms of Section 75 of the Bihar Reorganization Act, 2000. The exercise for reallocation of such large number of employees took into account the categories to which such personnel belong such as un-reserved, Scheduled Caste, Scheduled Tribe or any other reserve category. This categorization was also intended to ensure fair and equitable treatment to all persons affected by the provisions of Part-VIII of the Reorganization Act, 2000 and in terms of Section 75 clause-(b) of the Act of 2000. Persons belonging to different categories i.e. General, SC, ST etc. were allocated as per the ratio in which the allocation was to be made to the successor States. Personnel/employees like the private respondents belonging to SC categories have been allocated the successor State of Jharkhand, though they may be resident of the Successor State of Bihar. If the contention of the petitioners is accepted than that would be not only repugnant to the whole object of the exercise of reorganization upon bifurcation of the parent State under the Act of 2000 specifically Part-VIII, but

would also result in disadvantage to service conditions of such persons, which cannot be done in view of the provisions of Section 73 of the Reorganization Act, 2000. In such circumstances, the ground urged on behalf of the petitioner to challenge the aforesaid conditions in the impugned letter dated 14.08.2008 is fallacious and cannot be sustained in the eye of law. Different considerations arise in case of fresh appointment undertaken after creation of the State of Jharkhand. Therefore, observations made hereinabove would no way mean to be a comment upon such exercise of appointment undertaken after creation of the State of Jharkhand. However, in the present case as discussed hereinabove, no interference is warranted. The writ petition being devoid of merit, is accordingly, dismissed. (Aparesh Kumar Singh, J.) Kamlesh/

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