

Indradeo Paswan vs Union Of India & Ors on 27 July, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2683, 2007 (7) SCC 250, 2007 AIR SCW 4848, 2007 LAB. I. C. 3200, 2008 (1) AIR JHAR R 471, (2007) 4 PAT LJR 71, (2008) 2 SERVLJ 130, (2007) 58 ALLINDCAS 138 (SC), 2007 (9) SCALE 380, (2007) 4 JLJR 65, (2007) 4 JCR 32 (SC), (2007) 3 SCT 707, (2007) 4 SERVLR 829, (2007) 5 SUPREME 623, (2007) 3 ESC 440, (2007) 9 SCALE 380

Author: P.K. Balasubramanyan

Bench: G.P. Mathur, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 3307 of 2007

PETITIONER:

INDRADEO PASWAN

RESPONDENT:

UNION OF INDIA & ORS

DATE OF JUDGMENT: 27/07/2007

BENCH:

G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 3307 OF 2007 (Arising out of SLP(C) No.16831 of 2006) P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. The appellant was appointed initially as a District Mining Officer in the State of Bihar on 21.6.1983. On 21.3.1993, he was promoted to the post of Deputy Director (Mines) in the State of Bihar. According to him, on 6.3.1997, he was appointed on officiating basis as Additional Director (Mines). It is the further case of the appellant that the Departmental Promotion Committee had met on 2.6.1998 and had recommended the case of the appellant for promotion to the post of Additional Director (Mines). The appellant filed C.W.J.C. No. 5871 of 1998 in the High Court of Patna praying for the issue of a writ of mandamus directing the respondent therein, the authority concerned, to take a final decision with regard to the promotion of the appellant. The High Court by order dated 28.4.1999 allowed the Writ Petition and issued a direction to the respondent therein to consider the case of the appellant for promotion within a period of three weeks from the date of the judgment. Meanwhile, the State of Bihar was reorganized under the Bihar Reorganization Act, 2000. The State of Jharkhand was carved out of the State of Bihar and the two separate states came into existence on

15.11.2000. Anticipating the coming into force of the Act and the bifurcation of the State in terms of the Scheme adopted by the Act, the Central Government on 6.11.2000 provisionally allocated the services of the appellant to the State of Jharkhand as Additional Director (Mines). According to the appellant, he took charge of the post of Additional Director (Mines) in the State of Jharkhand on 14.11.2000.

3. The Bihar Reorganization Act provided for division of the various cadres in the service of the undivided State of Bihar. Under Section 72 (2) of the Act, the Central Government had to determine by special or general order, the successor State to which every person, who immediately before the appointed day was serving in connection with the affairs of the State of Bihar shall be finally allotted for service and the date with effect from which such allotment was to take effect, as soon as may be after the Reorganization Act came into force. The appointed day in terms of the Act was 15.11.2000. Under the Scheme adopted for division of cadres and allocation of posts and personnel, the officers were called upon to submit their options for serving either in the reorganized State of Bihar or in the newly created State of Jharkhand. Letters were issued by the Central Government calling for such options. The appellant gave his option indicating that he would like to be allocated to the State of Jharkhand. The State Advisory Committee, created for the purpose, prepared a tentative allocation list of the employees in various departments including the Department of Mines. Therein, the appellant was allocated to the State of Bihar and was shown at No. 1 in the seniority list of his Department. After the publication of the tentative allocation list dated 8.8.2001, the State Advisory Committee called for objections thereto. The appellant submitted an objection dated 3.10.2002 reiterating his preference to be allocated to the State of Jharkhand.

4. Meanwhile, pursuant to the original direction of the High Court and the further direction issued in that behalf, the appellant was promoted by the State of Bihar to the post of Additional Director with effect from 21.6.1997. According to the appellant, on 29.6.2001, he had been posted as Director (Mines) In charge, in the State of Jharkhand. In the final allocation list, the appellant was finally allocated to the reorganized State of Bihar not accepting the option exercised by him. This was by order dated 24.2.2005. Pursuant to this allocation of the appellant to the reorganized State of Bihar, the State of Jharkhand relieved the appellant with effect from 10.5.2005. Feeling aggrieved thereby, the appellant filed W.P. (C) No. 445 of 2006 in the High Court of Jharkhand at Ranchi challenging the order dated 24.2.2005 allocating the appellant to the reorganized State of Bihar. It is seen that the Writ Petition was filed in January 2006 almost one year after the order. The High Court, by judgment dated 31.1.2006, dismissed the Writ Petition filed by the appellant on the basis that no adequate ground was made out to interfere with the allocation of the appellant to the reorganized State of Bihar in the cadre division. Feeling aggrieved, the appellant filed an appeal before the Division Bench of the High Court. The Division Bench, presumably directed the State Advisory Committee concerned with the cadre division, to file an affidavit in answer to the Writ Petition at the appellate stage. Such an affidavit was filed. Thereafter, considering the relevant aspects, the Division Bench of the High Court dismissed the appeal of the appellant finding no reason to interfere with the decision of the Single Judge or with the allocation of the appellant to the reorganized State of Bihar itself. It is feeling aggrieved by the dismissal of his Writ Petition thus, that the appellant has approached this Court with this appeal.

5. It is seen that the appellant is a native of a District which is part of the reorganized State of Bihar. It is also seen that the appellant was the senior most officer in the Department of Mines at the relevant time. According to the State Advisory Committee and the States of Bihar and Jharkhand, there was only one post of Director of Mines in the entire service in the undivided State of Bihar as on the appointed day and that post had to be allocated to the reorganized State of Bihar as per the settled norms. Since the appellant was the senior-most person in the cadre of Deputy Director (Mines) on the appointed day and since nobody occupied the promotional post of Additional Director (Mines) or the Director of Mines as on that day, the appellant had to be allocated to the reorganized State of Bihar so that he could aspire to get and get his due promotion as the Director of Mines. In view of this position, the occasion for entertaining the option of the appellant did not arise since if on the appointed day, the appellant had been allotted to the State of Jharkhand, someone junior to him could have to be promoted to hold the post of Additional Director of Mines and subsequently the Director of Mines and that would have been unjust to the appellant and would have been unfair. Thus, the stand adopted is that the option of the appellant could not be accepted in the circumstances of the case. Nothing unfair was done by such allocation.

6. The learned single judge of the High Court held that the allocation of the appellant had been done after following the proper procedure laid down in that behalf, and that no ground had been made out for interfering with the allocation of the appellant to the reorganized State of Bihar. As regards the claim of the appellant that his position has been considered as the Deputy Director (Mines) when he had actually been posted with retrospective effect as Additional Director, the learned single judge observed that it was for the appellant to bring that aspect to the notice of the competent authority and get it rectified and that was no reason for interfering with the allocation itself. The Division Bench, in the appeal, after noticing the stand adopted in the counter affidavit and taking note of the principle laid down earlier in the High Court that interference with the allocation should be slow and only on very clear grounds, held that no grounds were made out for interference with the allocation of the appellant in the reorganized State of Bihar and that the rejection of his option was not arbitrary or unreasonable. Taking note of the liberty granted by the learned single judge to the appellant to claim his due place in the service in the reorganized State of Bihar, the Division Bench dismissed the appeal.

7. The learned Senior Counsel for the appellant contended that the order allocating him to the reorganized State of Bihar has turned out to be punitive since it altered his conditions of service since he was officiating as Additional Director with effect from 21.6.1997 though the order in that behalf itself was passed only on 17.11.2003. It was further contended that the allocation was vitiated by non application of mind by the State Advisory Committee. The guidelines issued in the matter of allocation had been violated. The High Court has refused to interfere only on the basis of the misunderstanding of an earlier decision of that Court in Prakash Chandra Sinha etc. Vs. Union of India & Ors. [2003 (4) J.C.R. 165] These contentions are met on behalf of the respondents by pointing out that the appellant was the senior-most in the Department of Mines, had been given his due place and in fact it was to protect his position as No. 1 in the ranked list and by taking note of the prospects of his promotion, the availability of the only post of Director of Mines as on the appointed day that he was allocated to the reorganized State of Bihar and there was no question of the order of allocation being punitive as contended. The norms set down and the guidelines issued

had been duly followed and there was no reason to interfere on the ground of non compliance with the guidelines or on the ground of non application of mind. In Prakash Chandra Sinha's case, the High Court had laid down that unless the court is compelled to interfere on the basis of a clear illegality or wednesbury unreasonableness, the court should leave the allocation of personnel in the various services as it was and that acceptance of individual grievances, unless clear cases are made out, would make it a never ending process and that would not be in the interests of the reorganized States or of the employees and going by this yardstick, the High Court was justified in the case on hand in not interfering with the allocation of the appellant to the reorganized State of Bihar. It was also submitted that after all, the appellant was a native of a district in the reorganized State of Bihar and he was the senior-most in the Department of Mines even in the undivided State of Bihar and continues to be so in the reorganized State of Bihar and the solitary post of Director of Mines as on the appointed day, available only in the State of Bihar, was within the reach of the appellant and he could not be deprived of that prospect of promotion by being allocated to the State of Jharkhand, which as on the appointed day, did not have the post of Director of Mines.

8. We may notice straightaway that no case of mala fides or irrationality has been made out in the matter of allocation of the appellant to the reorganized State of Bihar. The case is pitched only on the ground of non- acceptance of the option of the appellant and an attack on the grounds for its rejection.

9. The main contention on behalf of the appellant is that the appellant had worked for a major part of his tenure in the Department in areas now forming part of the State of Jharkhand, that the appellant had exercised his option to be allotted to the State of Jharkhand, that the appellant had been posted as Incharge Director (Mines), Jharkhand, a post which had been created subsequent to the bifurcation and the appointed day and under the circumstances, the option exercised by the appellant ought to have been accepted. It was also submitted that the relevant date was not the appointed day and that the subsequent developments of the direction issued by the High Court and the order passed by the State of Bihar retrospectively promoting the appellant as Additional Director with effect from a day prior to the appointed day, should have been taken note of. The effect of the retrospective promotion could not be ignored. The decision in *R.M. Ramual Vs. State of Himachal Pradesh & ors.* [(1989) 1 S.C.C. 285] was relied upon as supporting the position that the subsequent development was bound to be taken note of by the State Advisory Committee and by the Central Government. Having gone through the decision relied upon by the learned counsel, we find that it related to a question of inter se seniority and this Court held that under Section 82(6) of the Punjab Reorganization Act, 1966 conditions of service applicable immediately before the appointed day could not be varied to the disadvantage of an officer except with the previous approval of the Central Government. An order passed rectifying an error did not adversely affect the conditions of service and hence did not require the prior consent of the Central Government. The decision of the High Court was set aside and the rectified seniority list was restored. The restored seniority had to be taken note of. We cannot understand this decision as an authority for the position that in the case of a reorganization like the one involved under the Bihar Reorganization Act, 2000, the relevant date for bifurcation and allocation is not the appointed day. The acceptance of the argument that subsequent events are bound to be taken note of in various individual cases would mean that the bifurcation would never become final or at least would not become final for years together, a state of

affairs which the court or any executive, must avoid as far as possible.

10. Here, the State Advisory Committee has explained the position as to why the appellant had to be and had been allocated to the reorganized State of Bihar and the context in which his option to serve in the State of Jharkhand could not be accepted. We find that the reason given is not only rational but is also sustainable. The fact that the appellant had worked for a period of 7 years out of 13 years and 6 months of his service in areas which now form part of the State of Jharkhand is neither here nor there. For, most of the mines in the erstwhile State of Bihar are in areas which have now gone to Jharkhand. So, that fact does not by itself give any right to the appellant to claim that he had a right to be allocated to the reorganized State of Jharkhand.

11. Learned counsel relied upon the decisions in *D. Rajiah Raj & Ors. Vs. Union of India & Ors.* [(1973) 1 S.C.C. 61] and *Mohd. Shahabuddin & ors. Vs. Union of India & ors.* [(1975) 4 S.C.C. 203] to emphasize that the power of the court to judicially review such an order is not taken away and that since the Central Government has a power of review, this Court could always direct a reconsideration by it of the case of the appellant. As we have found the allotment of the appellant to the State of Bihar to be based on the relevant provisions of the Act and the principles adopted for bifurcation of the services on the reorganization of the State of Bihar, nothing turns on this argument. In fact, we are inclined to think that if the appellant had been allocated to the State of Jharkhand, he could have legitimately raised a claim that his entitlement to be considered for promotion to the only post of Director of Mines available and assigned to the State of Bihar, would be affected and his allocation to the State of Jharkhand has prejudiced him. We have already held that the relevant date is the appointed day under the Act for the coming into existence of the two States and on that basis the State of Jharkhand did not have the post of Director of Mines as on the appointed day and the appellant was the senior-most member in the service eligible to be considered for it. In the case on hand, even if the retrospective promotion of the appellant as Additional Director (Mines) is taken note of, it would only mean that he would be the senior most aspirant to the post of Director of Mines, a post assigned to the reorganized State of Bihar and a post not available in the State of Jharkhand as on the appointed day. We are therefore satisfied that no occasion has arisen for the court to exercise its jurisdiction in the matter of allocation of the appellant to the reorganized State of Bihar. The arguments based on Section 73 of the Act would, in our view, in fact support the allocation of the appellant to the reorganized State of Bihar. Therefore, we are satisfied that the appellant has failed to establish that any of the provisions of the Act or the norms set out in that behalf for bifurcation of the service, has been violated while allocating the appellant to the reorganized State of Bihar.

12. We see no reason not to accept the principle adopted in *Prakash Chandra Sinha (supra)* by the High Court that the allocation should not be interfered with on individual grievances relating to non acceptance of options exercised, unless clear illegality or wednesbury unreasonableness is established. The State was reorganized with effect from 20.11.2000. We are in the year 2007. It had taken almost five years for the Union of India to publish the final list of allocation regarding this Department. In the absence of any clear ground for interference found in the case, merely on the ground that the appellant had opted for going to the State of Jharkhand but had been allocated to the State of Bihar, it does not appear to be necessary or proper to interfere with the order of

allocation. It is brought to our notice that the State of Bihar had subsequently informed the appellant that he had been given regular promotion to the post of Additional Director of Mines by the Department of Mines and Geology and that he could join that post. There is therefore no subsisting reason for the appellant to complain even as regards the post to be held by him in the reorganized State of Bihar. It is not necessary for us to deal with or comment on the consequences of the appellant, in spite of being relieved from the State of Jharkhand on 10.5.2005 pursuant to the final allocation, not joining the service in the reorganized State of Bihar. Suffice it to say that in this appeal we see no ground to interfere with the decision of the High Court.

13. We therefore affirm the decision of the High Court and dismiss this appeal with costs.