

[2019] 9 S.C.R. 1060

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STATE OF BIHAR & ORS.

v.

DR. CHAITRAYA KUMAR SINGH & ORS.

(Civil Appeal No.5709 of 2019)

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JULY 19, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

Service Law: Transfer – Re-organisation of two States – Bifurcation of erstwhile State into the State of Bihar and the State of Jharkhand – First respondent-Medical Officer initially allocated to the State of Jharkhand – After three years on request by respondent, allocation made to State of Bihar with mutual approval of both States – However, the respondent continued to work as employee of State of Jharkhand till he attained the age of superannuation – Writ petition filed by respondent few days before his superannuation, seeking issuance of directions to the State of Jharkhand to relieve him for joining the State of Bihar – High Court issued direction to State of Bihar to issue orders for accepting the first respondent as its employee on transfer from State of Jharkhand – Upheld by the Division Bench – On appeal, held: First respondent took no steps to pursue his legal remedies when he was aggrieved by the decision of the State of Jharkhand not to relieve him from service so as to enable him to join the State of Bihar – He did not espouse his rights and remedies under the law by seeking recourse to the reliefs available at that stage, rather continued to work for the State of Jharkhand for seven years and retired from service on 30 April 2017 – Order of the Government of Jharkhand relieving him on 31 July 2017 after his superannuation, is of no consequence – Having now attained the age of superannuation in the State of Jharkhand, the State to which he was originally assigned and where despite the order of re-allocation the respondent worked for seven years, it would not be appropriate to direct that he should be absorbed by the State of Bihar – Thus, the High Court erred in issuing the directions and the order of the High Court set aside.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.5709 of 2019 A

From the Judgment and Order dated 05.11.2018 of the High Court of Jharkhand at Ranchi in L.P.A. No. 197 of 2018

Devashish Bharuka, Ravi Bharuka, Ms. Sarvshree, Justine George, Aditya Singhal, Akshay Amritanshu, Advs. for the Appellants. B

Kumar Shivan, Manoj Tandon, Ms. Tulika Mukherjee, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J. C

1. Leave granted.

2. This appeal arises from a judgment of a Division Bench of the High Court of Jharkhand by which a direction that was issued by the learned Single Judge to the State of Bihar to issue orders “for accepting the first respondent as its employee on transfer from the State of Jharkhand” has been upheld. D

3. The first respondent was appointed as an Ayurvedic Medical Officer on 26 May 1989 in the erstwhile State of Bihar prior to its reorganization. On 15 November 2000, the Bihar Re-organisation Act resulted in the bifurcation of the erstwhile State into the State of Bihar and the State of Jharkhand. Options were invited from the employees for allocation of their services to either of the resulting States. The first respondent opted for the State of Bihar. E

4. The Union government issued certain guidelines on 8 June 2006 which envisaged that even after final allocations, employees could be posted to either of the succeeding States with the mutual consent of both States. On 9 February 2007, the Union government allocated the first respondent to the State of Jharkhand upon which the Government of Bihar in the Department of Welfare issued a notification on 27 February 2007 requiring the first respondent to join the State of Jharkhand. On 22 March 2007, the first respondent joined the State of Jharkhand and was posted as an Ayurvedic Medical Officer in District Simdega. F G

5. On 11 January 2010, the first respondent made an application for his re-allocation to the State of Bihar. Both the States acceded to

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A the request and on 30 July 2010, the first respondent was allocated to the State of Bihar. Consequently, on 6 September 2010, the Home Department in the Government of Bihar issued formal orders allocating the services of the respondent to the State of Bihar.

B 6. The grievance of the first respondent is that though he submitted an application to the State of Jharkhand to relieve him on 6 October 2010, he was not relieved so as to enable him to join the State of Bihar.

C 7. The factual position that emerges is that the first respondent continued to work as an employee of the State of Jharkhand where he attained the age of superannuation on 30 April 2017. A few days before he superannuated, the first respondent filed a Writ Petition before the High Court of Jharkhand seeking the following reliefs:-

D “(i) For a direction commanding upon the respondent no. 2 to relieve the petitioner forthwith for joining to the State of Bihar, in view of the Notification contained in Memo no. Sta./Jha./Vi.-244/10-10416 dated 06.09.2010, issued by Home(Special) Department, Government of Bihar, whereby the petitioner was allocated to the State of Bihar with the consent of both the successor States.

E (ii) To further direct the respondent no. 3 to accept the joining of the petitioner in the State of Bihar in the light of Notification contained in Memo No. Sta./Jha./Vi.-244/10-10416 dated 06.09.2010 issued by the Home (Special) Department, Government of Bihar.

F (iii) To direct the respondents 1 and 2 to explain to this Hon’ble Court as to under what power and authority the petitioner has not been relieved as yet for joining to the State of Bihar, despite the decision of allocation of the petitioner to the State of Bihar with the consent of both the successor State.”

G 8. On 31 July 2017, after the first respondent had retired, the State of Jharkhand purported to relieve him with effect from 30 April 2017. The age of superannuation in Bihar applicable to the first respondent is 67 years whereas in the State of Jharkhand, where he had worked, he attained the age of superannuation upon reaching the age of 60 years.

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9. The Writ Petition was allowed by the learned Single Judge and the order has been confirmed in a Letters Patent Appeal by the Division Bench. A

10. Assailing the correctness of the judgment of the Division Bench, Mr. Devashish Bharuka, learned counsel appearing on behalf of the appellant submitted that in pursuance of the request of the first respondent, an allocation was made to the State of Bihar with the mutual approval of both States. However, despite his allocation to the State of Bihar on 6 September 2010, the first respondent continued to work in the State of Jharkhand until he retired in 2017. According to the appellant, no vacancy is available in the State of Bihar against which the respondent can now be absorbed. It has also been urged that it was only in 2017 that the respondent instituted the writ proceedings to enforce the order dated 6 September 2010 by which time he was on the verge of retirement in the State of Jharkhand. Hence, it has been submitted that the first respondent having now retired from the State of Jharkhand, cannot seek relief in pursuance of the order dated 6 September 2010. Moreover, it has been submitted that he was informed on 12 October 2015 that his application for joining the State of Bihar could not be accepted in the absence of a vacancy and even thereafter, no steps were taken by the respondent to ensure that the State of Jharkhand relieved him so as to enable him to join the services of the State of Bihar. Mr. Bharuka urged that it was only with a view to seek the benefit of an enhanced age of retirement that the first respondent is now attempting to move over to the State of Bihar after supernannuating from Jharkhand. B C D E

11. On the other hand, Mr. Manoj Tandon, learned counsel appearing on behalf of the first respondent has urged that after the allocation of his services to the State of Bihar on 6 September 2010, there has been no withdrawal of that notification. Learned counsel submitted that the first respondent made all efforts with both States: with the Government of Bihar by seeking to join service and with the Government of Jharkhand by seeking to be relieved. Since he was not relieved by the State of Jharkhand, it was urged that he had no option but to continue in service. Hence, it has been submitted that so long as the notification allocating him to the State of Bihar continues to hold the field, there was no reason for the appellants to F G

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- A deny him the benefit therein even though he has attained the age of superannuation in the State of Jharkhand.

12. The facts as they emerge before the Court indicate that upon the reorganization of the two States in 2000, the first respondent was initially allocated to the State of Jharkhand on 9 February 2007. In 2010, when the respondent sought a re-allocation to the State of Bihar, which was permissible under the guidelines of the Union government with the consent of the two States, his request was acceded to and he was in fact allocated to the State of Bihar on 6 September 2010. The grievance of the first respondent evidently is that the State of Jharkhand did not relieve him. However, the first respondent took no steps to pursue his legal remedies when he was aggrieved by the decision of the State of Jharkhand not to relieve him from service so as to enable him to join the State of Bihar. The first respondent did not espouse his rights and remedies under the law by seeking recourse to such reliefs as would have been available at that stage. Instead, he continued to work for the State of Jharkhand for seven years and retired from service on 30 April 2017. The order of the Government of Jharkhand relieving him on 31 July 2017 after his superannuation, is of no consequence. The first respondent must, take the blame for not having pursued remedies available to him under the law to ensure that the State of Jharkhand issued an order relieving him so as to join the State of Bihar. Having now attained the age of superannuation in the State of Jharkhand, the State to which he was originally assigned and where despite the order of re-allocation the respondent worked for seven years, it would be manifestly inappropriate to direct that he should be absorbed by the State of Bihar. Quite apart from the fact that the State of Bihar has submitted before the Court that they have no vacancies, the respondent did not take steps to enforce his rights under the order dated 6 September 2010 even after the State of Bihar informed him on 12 October 2015 that it was unable to accept his services.

- G 13. We are of the view that the learned Single Judge of the High Court and Division Bench in appeal, were in error in acceding to the prayer for relief on the part of the respondent.

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14. We accordingly allow the appeal and set aside the impugned A
judgment and order of the High Court dated 5 November 2018. In the
circumstances, there shall be no order as to costs.

15. Pending application(s), if any, shall stand disposed of.

Nidhi Jain

Appeal allowed.