
(2015) 04 PAT CK 0093
In the Patna High Court
Case No : CWJC No. 10653 of 2008

Anirudh Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 166

Citation : (2015) 4 PLJR 63

Hon'ble Judges : Navaniti Prasad Singh, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Navaniti Prasad Singh, J.—There are counter affidavits including counter affidavit on behalf of the respondent Nos. 2, 3 and 4 sworn by the Principal Secretary, Rural Development Department, Government of Bihar, Patna. I have heard learned counsel for the petitioner and learned counsel for the State and perused the records for final disposal of the writ petition at this stage itself.

2. At the very outset, it may be noted that the facts of this case reveal sorry state of affairs prevailing in the Officers subordinate to the government by ignoring their responsibility to implement government decisions and orders. Senior Officers override governmental decisions with impunity. This is totally unexpected in the constitutional set up.

3. The petitioner had filed this writ application on 21.7.2008 seeking primarily two reliefs, first, permanent absorption in the permanent government service and, second, extension of age of superannuation to 60 years with all consequential benefits. The facts are not in dispute.

4. The petitioner was appointed on sanctioned vacant post of Junior. Statistical Assistant in Small Farmers Development Agency, Bhagalpur, on 12.1.1976 in the pay scale of Rs. 296-460/-. This Agency, later on, in the year 1982, became part of District Rural Development Agency, Bhagalpur. On 12.3.1976, the petitioner

was re-appointed on sanctioned vacant post on Lower Division Assistant in the said Agency itself. The District Rural Development Agency were set up in all the districts not only in the State of Bihar, but the entire country under the aegis of Government of India as a controlling agency for anti-poverty programme. The entire working of the Agency was funded 75% by the Union of India and 25% by the State Government.

5. It appears that in the year 1999 itself, Government of India took a decision that henceforth no, person would be directly employed in the District Rural Development Agency and all persons who had been employed therein prior to 1.4.1999 should be absorbed in one or the other departments of the respective State Governments and then brought on deputation to DRDA.

6. It is pursuant to the aforesaid that the matter was considered by the State Government after series of directions were issued by this court in respect of employees of the DRDA in the State of Bihar. The State Government in the Department of Rural Development took a decision which was then duly notified under orders of the Governor on or before 13.11.2003 (Annexure-2). The notified decision of the State Government was that the employees of the DRDA would be absorbed permanently in government service following roster in various departments and then they would be brought in deputation to DRDA. Upon such absorbed employees retiring there would be no fresh recruitment in their place. This resolution of the Government was with the approval of the State Government of Personnel and Administrative Reforms as well as Finance Department. Thus, it was a formalized decision of the Government in terms of Article 166 of the Constitution of India.

7. In pursuance to the aforesaid, from the Department of Rural Development, Government of Bihar, letter No. 896 dated 9.3.2005 was then issued by the Collector-cum-District Magistrate and Deputy Development Commissioner of all the Districts. This is Annexure-3 to the writ petition and is of some importance. This clearly lays down the manner in which all employees of DRDA who were employed prior to 1.4.1999 had to be absorbed in the State Government service pursuant to directives of the Government of India. It was directed that the steps for such absorption be taken on priority basis. It may be noted here that again in the year 2006, the earlier decision of the State Government has notified on 13.11.2003 (Annexure-2) was taken up by the State Government and there was slight amendment thereto pursuant to various orders passed by this Court, but effectively the earlier decision of the absorption was reiterated, this court again to be notified in the gazette and issued under the orders of the Governor being again a governmental decision in terms of Article 166 of the Constitution of India.

8. It appears that petitioner and others who were at Bhagalpur in the DRDA waited for their cases to be considered for absorption. The primary role in that regard was to be played by the Deputy Development Commissioner. In the meantime, before noted that the State Government had taken a conscious decision that all the employees of the State Government would now retire at the

age of 60 years. Accordingly, petitioner filed interlocutory application and an interim order was passed by this Court directing that the petitioner would continue in service up to the age of 60 years. He was to superannuate on 30th August, 2008, and as such, he continued for further two years i.e. up to 30.8.2010.

9. Now, let us see the stand of the respondents including the State. What is shocking is that in spite of these governmental decisions, communications of the Deputy Development Commissioner, Bhagalpur, shows that he is reluctant to follow governmental decisions. He keeps questioning the authorities as to whether government directions are to be implemented. This is instead of implementing government directions. He is only trying to delay, if not avoiding its implementation for reasons best known to him. It is not the case of the State at any point of time that posts were not available or there was any other difficulty in the matter.

10. As noted above, the Central Government directives which had been accepted by the State Government was clear on the persons working in DRDA prior to 1.4.1999, had to be permanently absorbed in the State Government service and then deputed to DRDA. No further employment had to be made in DRDA after 1.4.1999. State Government, accordingly, took a decision and issued directions for absorption in many districts. Where officers efficiently functioned, absorptions were done but in some districts like Bhagalpur, they were virtually assigned to cold storage. That is what forced the writ petitioner to come to this Court.

11. I have seen the stand of the Deputy Development Commissioner (D.D.C.). He virtually expressed helplessness in the matter stating that he had been querying as to whether State Government directives had to be implemented. The details were not sent by him to the district administration, and as such, adjustment could not be done. It may be noted that D.D.C. is the Chairman of the DRDA at district level and now if he chooses not to send the names, the administration cannot do anything about it but he also does not deny right of the petitioner to be permanently absorbed in government service as per decisions of the State Government taken as far back as in the year 2003 itself.

12. Now, the court repeatedly ordered the Secretary of the Rural Development Department to file counter affidavit. After much persuasion and threat of contempt, ultimately a counter affidavit has now been filed on 20.6.2014, after six years of pendency of the writ petition, by the Principal Secretary.

13. It is this counter affidavit that disturbs the court as noticed above. The decision of Central Government was taken in the year 1999. The State Government took decisions in the year 2003 to 2006, as noted above, to implement the decisions of the Central Government. Directions were issued to all the district authorities.

14. Now, an order is issued by the Principal Secretary, Rural Development Department, Government of Bihar on 27.2.2013, which is Annexure-A to the

counter affidavit. In the first part, it notices that a writ petition had been disposed of by this Court being C.W.J.C. No. 649/2010 (Md. Mogiruzama and Others vs. The State of Bihar) on 21.9.2010 in which the order was as under:--

"Heard learned Counsel for the petitioners, for the State of Bihar as also for the Union of India. At the very outset contrary to the averments made in the counter affidavit referring to the supplementary affidavit it is conceded on behalf of the State of Bihar that it is under obligation to consider the case of the petitioners for absorption in terms of the policy guidelines given by the Union of India with regard to those appointment prior to 1.4.1999."

15. Before proceeding, this court could notice that this order of the Court shows that the State Government accepted its obligation of absorbing employees of DRDA in terms of the guidelines of the Government of India and it was upon this undertaking that the writ petition was disposed of. What shocks the Court is that what is said thereafter in this order. It challenges the authority of the Union of India to issue directions to the State Government and notice without reference to any document that even in past, Government of Bihar was not bound by directions of the Government of India, and as such, he decides that it is not possible to follow Government of India directives and absorb employees of DRDA in government service. He does not stop there. He proceeds and holds that all persons who were absorbed pursuant to government letter dated 9.3.2005 (Annexure-3) that any action taken thereunder would not be treated as precedent meaning thereby, no further person would be absorbed effectively nullifying the notified decisions of the State Government taken in the years 2003 and 2006, even without placing the matter before the State Government for its consideration.

16. The first thing I would like to note here is that once the decisions of the Government has been notified and expressed in the name of Governor, it has a certain sanctity. No Secretary or even Principal Secretary can himself all alone set aside such decisions. They are collective decisions of the government. As noted above, the said decision was taken after consulting various authorities and then issued in the name of Governor and notified. Such an exercise of setting at naught the governmental decision by a Secretary cannot be accepted in the present constitutional set up. Then, the question of arbitrariness and violation of Articles 14 and 16 of the Constitution arises.

17. All the districts in which officers performed efficiently, all persons of DRDA who were employed prior to 1.4.1999 got permanently absorbed in government service, including those who had been earlier battling this aspect in the Court, but those employees like the petitioner are now made to suffer because in their district, things did not move promptly and matters got delayed, forced them to further go into litigation and now they are deprived of their absorption and hence, substantial monetary benefits not only during service tenure but post retrial as well. The same set of plea of the District Rural Development Agency is being treated fundamentally different. Some have been permanently absorbed,

the other by virtue of this decision of the Secretary dated 27.2.2013 are out from their rights. If this is not violation of equal treatment to equals, what is it? Basic principles of Article 14 is that unequal must not be treated equal, but equals cannot be treated unequal.

18. The decision of the Secretary dated 27.2.2013, contained in memo No. 140229 in the Department of Rural Development cannot, thus, be sustained, and is, accordingly, quashed. This is Annexure-A to the counter affidavit on behalf of the Department. Accordingly, Annexure-A is set aside. The State Government is directed to pass appropriate orders absorbing the petitioner in permanent government service pursuant to the government's decisions as noted above of the years 2003 and 2006 and grant all consequential benefits to the petitioner, even though, petitioner has since superannuated. He has filed the writ petition while he was in service.

19. With this observations and directions, this writ petition stands disposed of. Needless to say that necessary order must be passed by the State within a period of three months from today.