
(2020) 02 PAT CK 0305

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 806 Of 2012

Bihar D.R.D.A.Karmi Sangh And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0305

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Mukul Sinha, Prashant Kumar, Ram Kinkar Choubey

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioners, learned counsel for the Respondent-State as well as learned counsel for the Accountant General.

The petitioners, before this Court, are employees working in the District Rural Development Agency (for short 'DRDA') subsequent upon their engagement on contractual basis in the year 2007. Their contract has been renewed from time to time. The admitted position is that till filing of the writ petition the petitioners remain to have the status of a contractual employees.

The writ application has been filed claiming the status of regular employees. Parity is sought on all matters, including grant of pay scale, promotional avenues, grade pay, etc. with that of the regular employees. The learned counsel for petitioners submits that in view of the guidelines of DRDA administration, issued by the Government of India, in the Ministry of Rural Development in the year 1999, the petitioners are entitled to be absorbed as regular employees and given the status of regular employees. Referring to Clause (v) of Clause 8.19 of the Report of the Committee on Restructuring of DRDA, issued in the year 2012, as well as the Minutes of the Performance Review Committee (for short 'PRC') Meeting pursuant to the meeting between the States and Union Territories issued by the Government of India, in the Ministry of Rural Development, Department of

Rural Development dated 28th and 30th & 31st of January, 2014, it is stated that the petitioners were entitled to be absorbed under the above-noted various decisions. The petitioners' counsel has also placed reliance on the decision of the Division Bench of this Court in the case of State of Bihar through the Chief Secretary, Government of Bihar, Patna vs. Anirudh Jha and Others in L.P.A. No. 2082 of 2015. The decision of the LPA is dated 13.03.2018. The petitioners' counsel submits that in that case also the Division Bench, relying upon the various decisions and directions issued by the Government of India, favouring absorption of employees by the DRDA, has directed the Deputy Development Commissioner, Bhagalpur, for implementing the Government decisions.

The learned State Counsel, on the other hand, would submit that the nature of DRDA is that of a Society. As long as the Central and State Government provides the funds for projects formulated by it, the same shall function. DRDAs, therefore, resort to employment on contractual basis. Such contractual appointment to augment the Group-'C' staff is contemplated under the various decisions of the Union of India as well as letter dated 26.06.2006 and 07.08.2006 issued by the Government of India (Annexure E and F to the supplementary counter affidavit filed on behalf of the Respondent Nos. 1 and 2). The provision for contractual employment has been made having regard to the earliest guidelines on DRDA. administration issued by the Govt. of India in the Ministry of Rural Development in the year 1999 (Annexure- D to the same supplementary Counter affidavit). The guidelines specifically directed that the DRDAs should not have permanent staff. Reliance is placed on paragraph No. 4.2 under Personnel policy of the DRDAs contained in the 1999 guidelines which reads as follows:-

"4.2 As a matter of policy, the DRDA should not have any permanent staff. Taking employees on deputation to the DRDA for specific periods has the advantage of better choice of staff, flexibility in staffing pattern and of motivating the staff. The objective of strengthening of DRDAs is to provide them with certain professional capacity and have a flexible-staffing pattern. To start with, DRDAs shall no longer be allowed to make any direct recruitment. In respect of the staff that is currently borne on the DRDA, the State Rural Development Department should immediately draw up a 3-5 year plan for absorption of the staff into the line departments."

Such stand has been taken by the State counsel to counter the submission of the petitioners' counsel that the 1999 guidelines could be relied upon by the petitioners for claiming absorption as regular employees in the State Government. The State Counsel has also submitted that decision of the Division Bench in LPA No 2082 of 2015, in fact, makes it abundantly clear that no such absorption can be claimed by the petitioners. The decision of the Government of India, as contained in 1999 guidelines, could not be relied upon by the petitioners as the same has been considered by the Division Bench to support the claim of the petitioners therein for absorption, since they had been employed

in the DRDAs prior to 01.04.1999.

This Court is in agreement with the submissions advanced by the State counsel. The scheme of staffing pattern that evolved on the basis of 1999 guidelines contemplated no further employment to be made in the DRDA after 01.04.1999. All the pre-existing staff, thereafter, were absorbed in the different districts. Thereafter, they were deputed to the DRDA. By resorting to this modus of staffing the DRDAs, along with resorting to contractual employment, as per need, were enabled the DRDAs to discharge its obligations for ensuring implementation of the projects/schemes for Rural Development. Apparently, such a system of staffing was preferred having regard to the fact that the schemes and projects were coterminous with the funds being made available for implementation thereof. On the basis of such guidelines/policy of staffing in the DRDAs, the petitioners', who are contractual employees in the DRDA, having been engaged on contractual basis in between 2007 & 2009, cannot claim regularization/absorption or parity in status with that of regular employees. The decision to absorb the existing employees of the DRDA in 1999, was with the objective of ensuring that the DRDA had no permanent staff. Accordingly, absorption was contemplated in the State Government, from where the staff were to be sent to the DRDA on "deputation". The 1999 guidelines, therefore, contemplated that after 01.04.1999, i. e. when the pre existing staff of DRDA were to be absorbed in the State Government, DRDA would be only functioning with staff deputed there or engaged, as per project implementation requirement on contract basis. Accordingly, the petitioners were employed much later on contract in between 2007 & 2009. The petitioners have come into contractual existence much after the guidelines had come into force in 1999. They, therefore, formed a distinct category from those who had served the DRDA prior to 1999, and were entitled to absorption in the State Government under the 1999 guidelines.

The petitioners, before the Division Bench, in LPA No 2082 of 2015, were also employees who had been appointed in the DRDAs prior to 01.04.1999, it is in this context, that the Division Bench observed in paragraph No.4 of order dated 13.03.2018, passed in LPA No 2082 of 2015 that claim of petitioners in the said writ/LPA proceedings was directed to be considered and had held that the writ court did not commit any error in extending the benefit of absorption to the petitioners therein. Paragraph Nos. 11,12, 13 and 14 of the judgment passed in CWJC No 10653 of 2008, from which, LPA No 2082 of 2015 had arisen, would show that the petitioners in those proceedings formed a distinct class, since they were employed prior to 1999 guidelines. This Court would consider it useful to reproduce paragraph Nos 11,12,13 and 14 of the writ Court which has been noted with affirmation by the Division Bench in paragraph no. 5 of the judgment passed in LPA No 2082 of 2015. Paragraph Nos 4 and 5 of the LPA judgment is being reproduced for consideration.

4. It is also not in dispute 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 01.04.1999 should be absorbed in one or the other departments of the respective State Governments and then brought on deputation to DRDA. Pursuant to the said decision of the Government of India, the matter was considered by the State Government and a conscious decision was taken by the State Government in the Department of Rural Development on 13.11.2003 (Annexure-2 to the writ application). It was also notified under the order of the Governor. The notified decision of the State Government states 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. The resolution of the Government was with the approval of the Department of Personnel and Administrative Reforms as well as Finance Department. The learned Writ Court therefore found that it was a formalized decision of the Government in terms of Article 166 of the Constitution of India.

5. The facts reveal that the State Government's decision was implemented everywhere except at Bhagalpur where the Deputy Development Commissioner kept on questioning the authorities as to whether government decisions are to be implemented. The learned Writ Court found that he was 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. On perusal of the pleadings, the learned Writ Court had to say the followings in paragraphs 11, 12, 13 and 14:-

"11. 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 01.04.1999, 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 01.04.1999. 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.

12. 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.

13. 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 20.06.2014, after six years of pendency of the writ petition, by the Principal Secretary.

14. 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."

The decision in LPA No. 2082 of 2015 also does not support the petitioners claim for absorption or grant of parity in status with that of the regular Government employees.

The writ petition is devoid of merit and the same is dismissed.