

(2004) 02 PAT CK 0073
In the Patna High Court
Case No : L.P.A. No. 650 of 1997

Parmeshwar Pd. Sah and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Citation : (2004) 3 PLJR 414

Hon'ble Judges : Ravi S. Dhavan, C.J.; Navin Sinha, J

Bench : Division Bench

Advocate : S.N. Jha and Chakrapani, for the Appellant; S.D. Yadav, for State and S.P. Tripathy and A.N. Rai for Corporation, for the Respondent

Final Decision : Allowed

Judgement

1. A Hindi translation of this order will be made out for the convenience of the Hon''ble Chief Minister, Bihar.
2. Any references to the Hon''ble Chief Minister as take place in this order are for reasons that they are on the record of the Letters Patent Appeal.
3. The State must come out with a clear cut defence as to what exactly is the decision. The decision must not be left over a period of time so that an employee of the State of the State Corporation lives in insecurity without being indicated about his or her tenure or service status.
4. The record in this case is a bundle of contradictions and the file has been shuttled between the Chief Secretary and the Hon''ble Chief Minister, Government of Bihar.
5. The Petitioners are the employees of the Bihar State Food and Civil Supplies Corporation (hereinafter referred to as the Corporation). The function of this Corporation is to deal with essential commodities which are disbursed through the public distribution system. It is a necessary attribute of welfare measures offered by the State. Any camouflage that this Corporation has nothing to do

with the government is belied from the fact that files were shuttling between the Chief Secretary and Hon"ble the Chief Minister, Bihar. This Corporation is wholly controlled by the State government.

6. The issue in this case is very petty. It is hardly one which should engage the High Court when inaction at the level of the state government belies good governance. That files may be locked up in the cupboard and no decision will be taken is a matter which Hon"ble the Chief Minister has to look into. The Court is afraid that the Chief Minister comes into the picture because the name of the Chief Minister is being taken in its defence by the State officials to save their responsibility. In the office nothings it is being conveyed that the Chief Minister did not and has not taken a decision.

7. The employees were seeking regularization. These are employees of the Corporation. The State was shifting the cut off date for regularization. Only two dates are relevant, 1985 and 1990. On 1985 there is no issue. Whether the cut off date was shifted to 1990 or to a subsequent year is being attempted to be made an issue by the State and the State-Respondents. If this is correct then the employees have no case. Should this be incorrect then the record has been tutored and a false statement has been made by the State of Bihar and the Corporation on a very petty matter relating to category IV employees.

8. The defence as on record is Firstly, the employees were not regularized as the Corporation was in financial constraints. Secondly, regularization could have been granted provided the date had been shifted formally to 1990 or beyond and alternatively if the employees have discharged 10 years of continuous service.

9. As far as the defence of financial constraints is concerned, this is to be found in the impugned order dated 15 April 1997 in CWJC No. 3591 of 1996 Awadesh Kumar Singh No. 2 and Ors. v. The State of Bihar and Ors. The State of Bihar and its Corporation took the defence that the Corporation is in detonating financial conditions, finds itself under financial constraints and, thus, the service of the employees cannot be regularized. On this ground the writ petition was dismissed.

10. But on the other hand when the Udai Sinha Committee was engaging its attention on payment of dues to employees of the Bihar State Food and Civil Supplies Corporation, this Corporation intimated the Udai Sinha Committee that it has enough money to take care of payment of any arrears which are to be paid to its employees. This certificate is contained by the committee in its report dated 28 January 2004. Did the government and or its Corporation tell a lie? What about these employees who were engaged during the periods 1984-88?

11. Now the other defence that the government has not taken a decision or the date has not been shifted to regularise these employees. Is this correct? This aspect is belied from the record. Hon"ble the Chief Minister will need to take recourse to a government order which was signed by an officer one S.N. Biswas, Commissioner cum Secretary. The order number is 5114 dated 20.5.1996. This

order is writ large with consultation with the cabinet and Hon"ble the Chief Minister speaks of a proposal of shifting the cut off date from 1.8.1995 to 31.12.1990. The corroborative evidence of this noting comes in the impugned order referred to in another proceedings on the same subject matter in CWJC No. 2322 of 1996; Shyam Narayan Paswan and Ors. v. The Bihar State Food and Civil Supplies Corporation Ltd. and Ors. The second paragraph of the order dated 10 April 1997 observes. It was pointed out that in the said two orders the cut off date was fixed as 1.8.1995 which was later modified as 31.1.1990.

12. In a fresh affidavit, which has been filed in 2004, the stand is reiterated that it was a wrong submission which had been made and, in fact, a decision had never been taken. Not to take a decision for seven long years hardly goes to the credit of the government, if the only purpose is to defeat the claim of the poor employees. The claim of little people, category IV employees, cannot be defeated merely to tell them that a decision has not been taken when the file has been in the lap of the Hon"ble Chief Minister. Someone sat on the file after taking orders from the Chief Minister. The state of the record lies thus and the court so certifies it on a certiorari action.

13. Conclusion There was never any financial constraints with the government or its corporation known as Bihar State Food and Civil Supplies Corporation Ltd. While it was generating a record on financial constraints to deny a rightful claim of employees, it was making contradictory statement in writings before the Udai Sinha Committee that it has sufficient funds to take care of its employees. Further, the intention to change the cut off date was always there. There was a proposal to change the cut off date from 1985 to 1990.

14. The last shabby defence that the decision was not formalized is like saying that the printing of the government gazette was stopped from publication. This is not governance. It is fighting with petty employees. The government is by the people for the people and of the people. It is supposed to honour its commitments. The defence of financial constraints turned out to bogus and false. Inaction was attributed to the Chief Minister when the file was sat upon by the babu.

15. As the name of the Chief Minister is being taken by the bureaucracy not to deliver the relief to these employees, the court is afraid the decision will have to be taken by Hon"ble the Chief Minister herself. It lies within her domain. The record is certified that there was an apparent intention to shift the date to regularise employees and the Chief Minister giving a green signal. The Chief Minister now has to do equity with these employees whose file was locked up in the cupboard, for 7 years. The plea of financial constraints by her officers was patently false. The responsibility of taking the decision, thus, lies on the Chief Minister.

16. The appeal is allowed with costs through out.