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Court : Patna

Decided On : Apr-10-2003

Judge : Ravi S. Dhavan, C.J. and R.N. Prasad, J.

Acts : Service Law

Appeal No. : L.P.A. No. 748 of 1996

Appellant : The State of Bihar and ors.

Respondent : Hari Shankar Prasad and ors.

Advocate for Def. : P.K. Verma, Adv.

Advocate for Pet/Ap. : V.N. Sinha, G.P. IX

Prior history : Ravi S. Dhavan, C.J. 1. This is an appeal on behalf of the State of Bihar. At the out set the Court may indicate that regard being had to the aspect and the manner in which the pleadings were not exchanged the State of Bihar can hardly contend that the order of the learned Judge is incorrect. 2. If the engagement of the contesting respondents was not illegal the only issue which remains is of the regularisation of their services. Such large scale employment and consequential regularisation

Judgement :

Ravi S. Dhavan, C.J.

1. This is an appeal on behalf of the State of Bihar. At the out set the Court may indicate that regard being had to the aspect and the manner in which the pleadings were not exchanged the State of Bihar can hardly contend that the order of the learned Judge is incorrect.

2. If the engagement of the contesting respondents was not illegal the only issue which remains is of the regularisation of their services. Such large scale employment and consequential regularisation of service can only be under a scheme formulated by the State Government. The first five respondents evaded filing a reply to the petition. This is a matter on record and noticed by the learned Judge. The 6th respondent filed a counter-affidavit. This respondent was the Executive Engineer, Sitamarhi Division. He virtually admitted the case of the respondent-petitioners. For instance it was accepted that the engagement of the persons concerned, in context, was regular; that there was a continuous employment and that the persons concerned had discharged 'continuous service'. It is accepted in the counter-affidavit that the Government is formulating a scheme for regularisation. The balance which remains is an aspect to give effect to the scheme.

3. It is noticed in the impugned judgment that on behalf of the State it was

virtually being solicited that the High Court may give a direction so that the State may regularise services. One thing this Court wants to make absolutely clear that let the administration not run for the State to say that the High Court has ordered it so. This is not so. Appellant-respondents will have to take the responsibility of running administration at their own initiative. If the illegalities be challenged and certified by the High Court, the Constitution obliges the High Court to do so.

4. In the present case a scheme was under preparation; so the counter-affidavit recites. Learned Counsel for the State draws the attention of the High Court to an order of the Supreme Court dated 30 October 2000 (Special Leave to Appeal (Civil) No. 18154/1999 : State of Bihar and Ors. v. Laghu Sichai Karmachari Sangh and Ors.), which notices that apparently State Government itself did formulate a scheme dated 18-6-1993. Thus, it is accepted that this scheme would apply to persons who satisfy all conditions mentioned in the scheme. Learned

Counsel for the respondent-petitioners contended that the Court may notice the concern of the respondents and the state of inaction by the State of Bihar. The contention is that whether it is the order of the Supreme Court dated 30-10-2000 which noticed a formulation of a scheme dated 18 June, 1993 or for that matter the concern shown for such employees by the Supreme Court in Re : State of Haryana and Ors. v. Piara Singh and Ors., AIR 1992 SC 2130. Today it is 2003 and the respondent-petitioners are still waiting the result of the scheme. It is submitted that the Court notice that even the Supreme Court has expressed concern implidely by spate of litigations by employees. The observation of the Supreme Court expressing its concern is contained in paragraph 25 in Re : State of Haryana and Ors. v. Piara Singh and Ors. (supra). Since the petition was brought in 1995, the order of the Supreme Court dated 30 October 2000, and further taking into account the concern of the Supreme Court in the State of Haryana and Ors. v. Piara Singh and Ors. (supra), the State has virtually taken advantage of the litigation during its pendency in various Courts. Even while this Letters Patent Appeal was pending, by this time and in between the State of Bihar should have taken steps whatever the content of the scheme dated 8-6-1993. The Court drew the attention of the learned State Government to the observation of the Supreme Court 'The State of Bihar will take steps to constitute necessary Committees and will take expeditious steps to implement the Scheme depending upon the number of vacancies available, from time to time.' The order of the Supreme Court was passed on 30 October, 2000. The Court did inquire from the learned State Counsel as to what urgency was shown once the Supreme Court has made it clear that the scheme should be implemented expeditiously. State Counsel submitted that three months time be granted to the State Government. So it be.

5. In the light of the observation made in this order the appeal is disposed of.

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