

Ragini Sahu and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-18-2008

Judge : Navin Sinha, J.

Acts : Societies Registration Act; Land Acquisition Act - Sections 4(1) and 5A

Appeal No. : CWJC No. 7560 of 2008

Appellant : Ragini Sahu and ors.

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Prior history : Navin Sinha, J. 1. Heard learned Counsel for the petitioners and for the State in this batch of writ applications. 2. The petitioners are aggrieved by order No. 5269 dated 15.4.2008 which cancels the order for their absorption dated 29.3.2007 as also the consequent posting order dated 4.5.2007. The impugned order is stated to be in pursuance of an order of this Court in CWJC No. 6263 of 2007 and analogous cases dated 6.2.2008 instituted by certain others. 3. The facts shortly stated are that t

Judgement :

Navin Sinha, J.

1. Heard learned Counsel for the petitioners and for the State in this batch of writ applications.
2. The petitioners are aggrieved by order No. 5269 dated 15.4.2008 which cancels the order for their absorption dated 29.3.2007 as also the consequent posting order dated 4.5.2007. The impugned order is stated to be in pursuance of an order of this Court in CWJC No. 6263 of 2007 and analogous cases dated 6.2.2008 instituted by certain others.
3. The facts shortly stated are that the petitioners and certain others were appointed as Lady Extension Officer under the Integrated Rural Development Agency Programme. An issue cropped up with regard to the status of such persons whether they be Government servant or not and which is presently under consideration before this Court in CWJC No. 5577 of 1998 admitted for hearing.
4. The petitioners were appointed under the District Rural Development Agency, a body registered under the Societies Registration Act. On 29.3.2007 a decision was taken to absorb those on the post of Lady Extension Officer as on 1.4.1999 into Government service. The decision was implemented. Having acquired the status of Government servant, they were then subjected to transfer. It is to be noted that at this stage of absorption into Government service, no issues were raised by any of those who came to be absorbed. The grievance arose after the orders of transfer were issued consequent to absorption.
5. CWJC No. 6263 of 2007 and analogous cases were then instituted by certain others on the assertion that the absorption was erroneous and consequently the transfers were illegal inasmuch as no service conditions had been framed. Their status as Government servant was still pending adjudication in CWJC No. 5572 of 1998. Inter se seniority of Lady Extension Officer has not been determined. This Court, therefore, allowed the writ application by directing that the order of transfer dated 4.5.2007 in pursuance of absorption as Government servant is quashed, till such time that the service conditions are not framed.
6. Learned Counsel for the petitioners in this batch of writ applications urged that they did not challenge their absorption into Government service. To annul their

orders of transfer after absorption shall be reverting them back to their status as employees of D.R.D.A. depriving them of the benefit of absorption. That they do not make an issue of their transfer and do not question their absorption. There was, thus, no justification to annul their orders of transfer on a writ petition preferred by those who were aggrieved of their transfers and absorption that the order on the writ petition was confined to such persons only.

7. Counsel for the State urged that this Court in CWJC No. 6263 of 2007 has annulled the entire order of transfer and not the petitioners therein alone. In view of absence of service condition as found by the High Court, there was no occasion for the State to challenge the order in Letters Patent Appeal. A very anomalous situation shall be created if the petitioners were directed not to go back to their original place of posting before absorption as this will create two separate categories of persons.

8. However, a counter affidavit has been filed on behalf of the Respondents in CWJC No. 7766 of 2008. It states that in pursuance of the order of transfer dated 4.5.2007 more than 50% of the Lady Extension Officer absorbed in the Government service have joined their new place of posting. That the order on the earlier writ petition has been passed at the behest of those who were aggrieved by their transfer. This Court has already noticed that even they had not questioned their absorption before such transfer.

9. To this Court the annulment of orders of absorption and transfer of those who accept the same and do not question its correctness on basis of a challenge laid out by certain others, shall be highly unjust and unfair. The petitioners are sought to be denied their status as Government servants. Those who assailed the order and those who did not do not form one category. The order in CWJC 6263 of 2007 confines itself in its operation to the petitioners therein in the penultimate paragraph. The absorption of the petitioners in that writ application stands annulled along with their transfer orders. The Court finds it difficult to sustain its applicability to the petitioners.

10. In : AIR 1999 SC3822 (Delhi Administration v. Gurdeep Singh Uban and Ors.) the challenge was to notifications under the Land Acquisition Act. A distinction was

drawn between those who had filed objections under Section 5A and those who had not. Those who had not filed objections it was held that the notification remained valid with regard to them. The plea that the benefit of quashing was available also to those who had not questioned the notification was negated in the relevant extract of paragraph 9 in the following manner: We are of the view that in respect of those who did not object to the Section 4(1) notification by filing objections under Section 5A, the said notification must be treated as being in force. The writ petitioners cannot be permitted to contend that in some other cases, the notification was quashed and that such quashing would also enure to their benefit.

11. The impugned order is, therefore, quashed in so far as the petitioners are concerned. The framing of their service conditions, of which the petitioners make no issue is an entirely different matter.

The writ applications stand allowed.

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