

Ashok Kumar Sinha and ors. Vs. the State of Bihar and ors.

Ashok Kumar Sinha and ors. Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/132972

Court : Patna

Decided On : Jul-04-2003

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

Acts : Bihar State Housing Board Act, 1982 - Sections 4 and 16(3)

Appeal No. : L.P.A. No. 454 of 1996

Appellant : Ashok Kumar Sinha and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : S.K. Ghose, Sr. Adv., AAG II and Nirmal Kumar Sinha, JC to AAG II

Advocate for Pet/Ap. : Umesh Pd. Singh, Sr. Adv., Gajendra Kumar Jha, Adv.A. Amanullah, Adv.

Disposition : Appeal allowed

Judgement :

Ravi S. Dhavan, C.J.

1. At the out set it needs to be recorded that in this case the Court had brought this matter to the notice of the Additional Advocate General, II, Mr. Swaraj Kumar Ghose, Senior Advocate because the circumstances which emerged from this case were necessary that the issue be made aware to the learned AAG II.

2. Five writ petitioners namely Messrs Ashok Kumar Sigha, Vinod Kumar, Ajay Shanker Sahay, Bejayendra Prasad Yadav and Dhirendra Kumar Singh filed the present petition with a grievance that having been recruited in 1981, 1982 and 1983 as Junior Engineers though on daily wages, but they were being denied regularisation and consequential officiating promotion on the post of Assistant Engineers and subsequently confirmation on the position of Assistant Engineers.

3. There is no issue on record that at the time when the petitioners were recruited and 12 others with them, 19 posts of Junior Engineers were vacant. This is accepted between the petitioners, the Housing Board and the State Government and even the Bihar Public Service Commission. There is no issue on record that there was no excess recruitment. The posts were vacant, 17 persons had been recruited. Twelve persons left their jobs for better assignment. Of the five petitioners who remained, petitioner Nos. 2 and 5 are now with the State of Jharkhand but this does not affect the issue as under the Bihar State Reorganisation Act, 2000 the Letters Patent Appeal continues to be heard and concluded by the Patna High Court.

4. No one can blame the petitioners-appellants for seeking regularisation, ad hoc promotion or for that matter their promotions on the posts. There is no issue on record of ineligibility nor any issue that the appointments were obtained or made by fraud or collusion.

5. As the facts emerged and the High Court notices certain over lying circumstances the inaction has been a part of the continuing disease which afflicts the administration in the State of Bihar, the State Government corporations not excluded. The Bihar State Housing Board had recruited these Junior Engineers on a daily wage basis, between the years 1981, 1982 and 1983. Between then and as of now the necessary formalities, under the Act under which it is constituted, were not carried through to process appointments on vacant posts. The common factor which reflects the affairs at the State Corporations of Bihar is that the management of the Corporations are rudderless and the Board of Directors are not constituted. There is no Board available to take policy decisions and the inaction affects the administrative staff who do not receive timely service benefits and, thus, petition

the High Court. This is one such case. It is necessary to record that the constitution of the Board is under Section 4 of the Bihar State Housing Board Act, 1982. The Act followed an ordinance. The Housing Board in fact was constituted in 1972. A reading of Section 4 of the Constitution of the Board reveals that there must be 13 persons on the Board. At present only 7 persons are on the Board. This information has been given to the Court by the learned AAG II on instructions received by him. The Board is also without a Chairman. Thus, not much executive action can be expected from a Board which is not constituted.

6. The common argument on behalf of the respondents is that given an occasion the Housing Board wants that the Bihar Public Service Commission should grant concurrence on the status of the petitioners. The State Government had not objected either. But whereas the recruitments were done in 1981, 1982 and 1983 by using powers under Section 16(3) (ii) of the Bihar State Housing Board Act 1982 to make appointments by recruitment on daily wages, the regularisation part was never seriously not carried through. It was only in 1990 that a record was being generated that 19 posts of Assistant Engineers are vacant and that a correspondence be initiated with the Bihar Public Service Commission to obtain concurrence on the 17 posts of Junior Engineers who were recruited as daily wagers. This resolution and the correspondence was taking place between the Housing Board and the State Government. A proposal was that the State Government should initiate a correspondence with the Bihar Public Service Commission. This alone finishes the controversy and lays to rest the aspect on the appointment of the petitioners-appellants. The appointments were valid. The petitioners-appellants accept and the respondents do not deny that the appointments were made on work charge establishments. This may be an excuse to make appointments, as posts were vacant, but the function of the Housing Board is not temporary. Basically it is public housing that it is obliged to provide. Between the Bihar State Housing Board and the Public Service Commission which at times has been left unconstituted, the petitioners-appellants cannot be blamed that they never saw regularisation.

7. Whatever action the State Government may have to take in the matter of the Bihar State Housing Board to constitute its Board of Directors as prescribed under

Section 4 is yet another matter and nothing to do with the present case.

8. Further, it is on record that even after the constitution of the Housing Board in 1972 there is correspondence between the Housing Board, the State Government and the Bihar Public Service Commission that the latter had granted concurrence on the promotions to the staff initially recruited as Junior Engineers. Thus for the Bihar Public Service Commission to take a back seat now and place a submission in an affidavit (no one has been present in Court in its behalf) that since this is a matter of direct appointment it does not concern the Commission, is a feeble excuse.

9. The only matter which has to be examined and no one has raised an issue, that as petitioners-appellants are not ineligible and that no appointment was either obtained or made by fraud or collusion their consequential service benefits be granted.

10. The petitioners-appellants are degree holders. The Correspondence which lies on the record between the respondents shows that even diploma holders were being considered for promotion and the Commission was giving its concurrence on such promotions.

11. Fortunately for the Housing Board of the 17 persons recruited only 5 remain. This is a very petty matter but if it lingers it spreads like disease to the other State Corporations. There is mal-functioning between the administration of the State of Bihar and its Corporations of decisions not being taken for the simple reason that the Boards of the Corporations are not constituted and policy decisions are put in the record room until the Board of Directors are constituted. The Court cannot wait until the Board of Directors are appointed.

12. In the circumstances the State Government is already possessed of the record on the correspondence which the Housing Board has made to it and it shall obtain the concurrence of the Bihar Public Service Commission. The case of the petitioners-appellants will be referred to the Bihar Public Service Commission within one month from today and it is expected that the Commission will act on the record and in a month after the receipt of the record and communicate its decision

to the State Government and thereafter the State Government to the Board.

13. Before the Court concludes it needs to be placed on record that in 1990 the petitioners-appellants had been granted ad hoc promotions on the post of Assistant Engineers and this is borne from the facts that they were reverted in view of the circumstances which have been narrated by this Court in the order.

14. The appeal is allowed with costs through out

A copy of this order will be delivered to the Additional Advocate General II.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com