Bihar Veterinary Association and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-20-2007

Judge : S.K. Katriar, J.

Appellant : Bihar Veterinary Association and ors.

Respondent : The State of Bihar and ors.

Judgement :

S.K. Katriar, J.

1. Heard Mr. Ganesh Prasad Singh for the petitioners, and Mr. Himanshu Kumar, learned JC to Government Advocate No. V, for respondent Nos. 1 to 4. This writ petition has been preferred with the prayer to quash Office Order No. 3/M 2-5-Bhatta/12/99-Part 10, dated 20.3.2001 (Annexure 1), whereby the non-practising allowance being paid to the Veterinary doctors of the Bihar Government has been withdrawn.

2. The facts are not at all in dispute. Petitioner No. 1 claims to be an Association of the veterinary doctors of the Government of Bihar, petitioner Nos. 2 to 4 claim to be its members and are serving the State Government as veterinary doctors. It view of the recommendations of the 5th Pay Commission read with the report of the Fitment Committee, the State Government. had allowed non-practising allowance every month to the veterinary doctors in lieu of the prohibition not to engage themselves in private practice as per the detailed terms and conditions

stipulated in the order dated 15.4.2000 (Annexure 9). The Finance Minister of the Government of Bihar directed the Finance Commissioner to take steps and complete the formalities to withdraw the non-practising allowance of all the doctors of the Government of Bihar including veterinary doctors, vide his order dated 10.1.2001 (Annexure-10). The departmental Minister seems to have taker a different stand and forwarded his note dated 22.1.2001 (Annexure 12/1), to the Finance Minister to the effect that the existing system of payment of non-practising allowance should be allowed to continue. The issue was placed before the Council of Ministers which considered the entire matter and passed the impugned order followed by the formal communication.

3. While assailing the validity of the impugned action, learned Counsel for the petitioners submits that, the recommendations of the 5th Pay Commission read with the report of the Fitment Committee was accepted by the State Government, as a result of which the non-practising allowance was granted to the veterinary doctors as per the order dated 15.4.2000 (Annexure 9), which has been acted upon, and has become part of the terms and conditions of service of the petitioners and cannot be withdrawn. He next submits that the same cannot be done on the order of the Finance Minister in a situation where the departmental minister, with much better awareness of the department's working, has opposed the Finance Minister's move. The Department's view has been completely ignored. He lastly submits that the impugned action has. been taken without proper enquiry and without notice to the petitioners.

4. The respondents have placed on record their counter affidavit and have supported the impugned action. He submits that the Government has taken the policy decision to grant the non-practising allowance which, for valid reasons, has been withdrawn. He next submits that the impugned order is based on the decision of the Council of Ministers, and the views expressed by the two ministers were fully considered by the Cabinet, He lastly submits that the impugned order is non-discriminatory, and the non-practising allowance of all the doctors of the Bihar Government including the veterinary doctors has been withdrawn.

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. It appears to me that the 5th Pay Commission, the report of the Fitment Committee, as well as the State Government, had taken note of the exceptionally large population of the cattle stock in India perhaps the second largest in the world, and keeping in view its extra-ordinary importance to the country's economy, intended to ensure that full care and protection of them has to be taken. The veterinary doctors of the State of Bihar should fully devote themselves to the care of the cattle stock of the State, and should not divert their energy and time to private practice. Therefore, the State Government accepted the recommendations of the 5th Pay Commission and the Fitment Committee and allowed non-practising allowance be the veterinary doctors, along with the condition not to engage themselves in private practice, by order dated 15.4.2000 (Annexure 9). The same was acted upon and all the veterinary doctors started receiving non-practising allowance along with their salary every month It appears that the State Government learnt from experience that the veterinary doctors were not discharging their corresponding obligation and continued to engage themselves in private practice. In other words, they were duping the State Government by enjoying the non-practising allowance and continuing with their private practice.

6. It may be open to the State Government to take action as per the terns and conditions indicated in the order dated 15.4.2000 (Annexure 9), but seems to have refrained from doing so and has instead chosen to withdraw the non-practising allowance as per the cabinet, decision and formally notified by the impugned order. The reason assigned in the impugned order in support of the action is reproduced hereinbelow:

xSj O;olkf;d HkRrk dh Lohd`fr ds ihNs jkT; ljdkj dh ewy Hkkouk ;g Fkh fd ljdkjh Ik'kq fpfdRld bl lqfo/kk dks izkIr dj tufgr esa vius ljdkjh nkf;Roksa ,oa dr ZO;ksa dk lE;d laiknu djsxs vkSj futh iSzfDVl ugha djsxsA ijUrq ljdkj dh ;g ea'kk vkSj y{; mi;qZDr O;oLFkk ds okotwn iwjk ugha gks ldk g SA jkT; ds vf/kdka'k Ik'kq fpfdRld vHkh Hkh ljdkjh vLirkyksa ,oa vU; fu/kkZfjr Lfkyksa ij fu;e le; ij mifLFkr ugha jgrs vkSj u fu/kkZfjr vof/k rd vius fu;r LFkku ij jgdj vius nkf;Roksa ,oa dr ZO;ksa dks iwjk djrs gSaA bl izdkj] xSj O;olkf;d HkRrk dh Lohd`fr ds ihNs ljdkj dk ewyHkwr mn~ns';

iwjk ugha gks ik jgk g SA nwljh vksj bldh Lohd`frZ ds pyrs jkT; dks"k ij yxHkx 4 djksM+ 15 yk[k :I;s dk vfrfjDr okf"kZd foRrh; Hkkj] fu"iz;ksT; iM+ jgk g SA

The reasons cannot be faulted, and is indeed a very sad commentary on the integrity and sense of duty of the veterinary doctors of the State of Bihar. This Court records its extreme sense of displeasure against the dishonest approach on the part of the veterinary doctors who were acting in complete contravention of the terms and conditions of the order dated 15.4.2000 (Annexure 9).

7. It is manifest from the statements made in the counter affidavit that non-practising allowance of the veterinary doctors has been withdrawn as a result of which they are now free to engage themselves in private practice, Paragraph-12 of the counter affidavit is reproduced hereinbelow for the facility of quick reference:

12. That about the contents of paragraph Nos. 34 and 35 it is stated that the Government's competent to alter the conditions of service of the Government employees as a whole or of a particular cadre, provided it is not discriminatory and unreasonable. For example, keeping in view its financial conditions, the Government, of India has withdrawn, the facilities of LTC to its employees for two years this is within its competence, What may amount to violation of natural justice or a right is the unilateral decision adversely affecting an individual employee or a group of employees it would have been discriminatory if only the doctors of veterinary services and not health services, were picked up for withdrawal of N.P.A, As stated earlier, the payment of N.P.A, is only a compensatory payment for forgoing the benefits that accrue out of private practice, Even before it was generalised, doctors of Health Services posted in some wings or posts were given the facility of NPA. Once the NPA is withdrawn its natural corollary is that doctors are free to do private practice after doing their government duty sincerely in the prescribed hours. It would have been in violation of rights accrued to the petitioners if L.P.A. was withdrawn and at the same time the doctors were not allowed to do private

8. It further appears that withdrawal of the non-practising allowance is non-discriminatory in nature and such facility enjoyed by all the doctors including the veterinary doctors has been uniformly withdrawn.

9. In view of the nature of the impugned action, no notice to the petitioners or their Association is required, particularly in a situation where non-practising allowance was in lieu of the injunction not to practice. The two were in the alternative. The State Government by its experience found that veterinary doctors were not co-operating in the matter, were not discharging their duties faithfully and conscientiously, continued to engage themselves in private practice and were also enjoying the non-practising allowance, led the State Government to restore the old practice. Indeed the impugned action does not act to the prejudice of the veterinary doctors. One facility instead of another has been restored in view of the dishonest and unethical approach of the veterinary doctors.

10. In view of the nature of the impugned action, the Government's internal enquiry for its own satisfaction is adequate, without the necessity of affording an opportunity to the veterinary doctors. I am in this connection reminded of the long line of cases dealing with large scale unfair means adopted by the examinees. The Courts have consistently held that in case of large scale unfair means, individual notices need not be issued. It would be enough for the authorities to satisfy themselves on an objective basis that unfair means on a large scale has taken place justifying cancellation of the examination as a whole. Reference may be made to the Following reported judgments:

1. : (1996)10SCC742 (Hanuman Prasad v. Union of India)

2. : AIR 2003 SC4268 Ram Preeti Yadav v. U P Board of High School and Intermediate Education

3. : (1996)IILLJ763SC (Biswa Ranjan Sahoo v. Subhanta Kumar Dinda and Ors.)

4. 2005 (4) PLJR (SC) 161 (Union of India v. Joseph P. Cherjon)

11. There is no merit in this writ petition.

It is accordingly dismissed.