

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2082 of 2015
IN
Civil Writ Jurisdiction Case No. 10653 of 2008**

- =====
1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Department of Rural Development, Government of Bihar, Patna.
 3. The Special Secretary, Department of Rural Development, Government of Bihar, Patna.
 4. The Deputy Secretary, Department of Rural Development, Government of Bihar, Patna.

.... Appellants

Versus

1. Anirudh Jha, S/o Late Sudha Kant Jha, Resident of M.I.G.-53, Sector-II, Housing Board Colony, Barari, P.S.- Barari, Town & District- Bhagalpur.

.....Petitioner.....Respondent 1st Set.

2. The Divisional Commissioner, Bhagalpur.
3. The Secretary to the Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The Establishment Deputy Collector, Bhagalpur Collectorate, Bhagalpur.
6. The Governing Body, the District Rural Development Agency, Bhagalpur through its Chief Executive Officer-cum-the Deputy Development Commissioner, Bhagalpur.
7. The Chairman, the District Rural Development Agency, Bhagalpur.
8. The Deputy Development Commissioner, Bhagalpur.
9. The Union of India through its Secretary, Ministry of Rural Development, Government of India, New Delhi.

Respondents No.5 to 12.....Respondent 2nd Set
Respondents

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Appearance :

For the Appellant/s : Mr. S.Raza Ahmad, AAG-5

For the Respondent/s : Mr. Y.V. Giri, Sr.Adv.

Mr.Purushottam Kumar Jha, Adv.



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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 13-03-2018

The present Letters Patent Appeal has come up for consideration for setting aside the judgment dated 27.04.2015 passed by the learned Writ Court in CWJC No.10653 of 2008 by which the learned Writ Court has been pleased to allow the writ application and for that purpose quashed the decision of the Secretary, Rural Development Department as contained in Memo No.140229 dated 27.02.2013. The State Government has been directed to pass appropriate orders absorbing the petitioner in permanent government service pursuant to the government's decision as noted in the impugned judgment taken by the State Government in between the year 2003 and 2006 and to grant all consequential benefits to the writ-petitioner even though the petitioner has superannuated.

2. In appeal before us, the learned senior counsel representing the State of Bihar does not dispute the facts as appearing from the impugned judgment of learned Writ Court. It is not in dispute that in order to implement anti-poverty programme under the aegis of Government of India, the District Rural Development



Agencies were set up in all the districts not only in the State of Bihar, but in the entire country as controlling agency. The entire working of the Agency was funded 75% by the Union of India and 25% by the State Government.

3. The petitioner was appointed on a sanctioned vacant post of Junior Statistical Assistant in Small Farmers Development Agency, Bhagalpur on 12.01.1976. This Agency, later on, in the year 1982, became part of District Rural Development Agency, Bhagalpur. On 12.03.1976, the petitioner was re-appointed on sanctioned vacant post of Lower Division Assistant in the said Agency itself.

4. It is also not in dispute that in the year 1999 itself, Government of India took a decision that henceforth no person would be directly employed in the District Rural Development Agency and all persons who had been employed therein prior to 01.04.1999 should be absorbed in one or the other departments of the respective State Governments and then brought on deputation to DRDA. Pursuant to the said decision of the Government of India, the matter was considered by the State Government and a conscious decision was taken by the State Government in the Department of Rural Development on 13.11.2003 (Annexure-2 to the writ application). It was also notified under the order of the Governor. The notified decision of the State Government states that the employees of the



DRDA would be absorbed permanently in government service following roster in various departments and then they would be brought in deputation to DRDA. Upon such absorbed employees retiring there would be no fresh recruitment in their place. The resolution of the Government was with the approval of the Department of Personnel and Administrative Reforms as well as Finance Department. The learned Writ Court therefore found that it was a formalized decision of the Government in terms of Article 166 of the Constitution of India.

5. The facts reveal that the State Government's decision was implemented everywhere except at Bhagalpur where the Deputy Development Commissioner kept on questioning the authorities as to whether government decisions are to be implemented. The learned Writ Court found that he was only trying to delay, if not avoiding its implementation for reasons best known to him. It is not the case of the State at any point of time that posts were not available or there was any other difficulty in the matter. On perusal of the pleadings, the learned Writ Court had to say the followings in paragraphs 11, 12, 13 and 14:-

"11. As noted above, the Central Government directives which had been accepted by the State Government was clear on the persons working in DRDA prior to 01.04.1999, had to be permanently



absorbed in the State Government service and then deputed to DRDA. No further employment had to be made in DRDA after 01.04.1999. State Government, accordingly, took a decision and issued directions for absorption in many districts. Where officers efficiently functioned, absorptions were done but in some districts like Bhagalpur, they were virtually assigned to cold storage. That is what forced the writ petitioner to come to this Court.

12. I have seen the stand of the Deputy Development Commissioner (D.D.C.). He virtually expressed helplessness in the matter stating that he had been querying as to whether State Government directives had to be implemented. The details were not sent by him to the district administration, and as such, adjustment could not be done. It may be noted that D.D.C. is the Chairman of the DRDA at district level and now if he chooses not to send the names, the administration cannot do anything about it but he also does not deny right of the petitioner to be permanently absorbed in government service as per decisions of the State Government taken as far back as in the year 2003 itself.

13. Now, the court repeatedly ordered the Secretary of the Rural Development Department to file counter affidavit. After much persuasion and threat of contempt, ultimately a counter affidavit has now been filed on 20.06.2014, after six years of pendency of the writ petition, by the Principal Secretary.

14. It is this counter affidavit that disturbs the court as noticed above. The decision of Central Government was taken in the year 1999. The State Government



took decisions in the year 2003 to 2006, as noted above, to implement the decisions of the Central Government. Directions were issued to all the district authorities.”

6. The learned Writ Court thereafter held that at this stage the Principal Secretary, Rural Development Department, Government of Bihar on 27.02.2013 came out with a communication, as contained in Annexure-A to the counter affidavit, whereunder shockingly for the Court the State Government challenged the authority of the Union of India to issue directions to the State Government and a contention was raised before the learned Writ Court that the Government of Bihar was not bound by the directions of the Government of India and as such it was decided not to follow the Government of India directives and absorb employees of ‘DRDA’ in government service. The affidavit filed before the learned Writ Court went on to say that all persons who were absorbed pursuant to government letter dated 09.03.2005 (Annexure-3) and any action taken thereunder would not be treated as precedent meaning thereby, no further person would be absorbed effectively nullifying the notified decisions of the State Government taken in the year 2003 and 2006 and even without placing the matter before the State Government for its reconsideration.



7. While assailing the impugned judgment, learned senior counsel Mr. S. Raza Ahmad representing the State of Bihar submits that the employees of DRDA are not government servants and, therefore, the government had no obligation of the nature as claimed by the writ petitioner. Learned senior counsel is, however, unable to controvert the findings of the learned Writ Court that there are notified decisions of the State Government taken in the year 2003 and 2006 whereunder following the directives of the Government of India the State Government had decided to implement the decisions of the Central Government and directions were accordingly issued to all the districts. Not only this, it was specifically pointed out by Mr. Y.V. Giri, learned senior counsel representing the private respondent that in fact the private respondent has only been singled out who has not been absorbed because of dilly-delaying tactics of the then D.D.C., Bhagalpur, whereas in all other places the employees of the 'DRDA' were duly absorbed following the government's directives.

8. Having heard learned counsel for the parties and on perusal of the records we find that the learned Writ Court has committed no error in extending the same benefits to the writ-petitioner who was deprived of the benefits of the government's decision which has been duly notified during the period 2003 and 2006. Only because the then D.D.C., Bhagalpur delayed the matter at



his level, the writ-petitioner cannot be allowed to suffer as it would amount conferring premium over the inaction on the part of the then D.D.C, Bhagalpur in implementing the government’s decision.

9. The Letters Patent Appeal has no merit. It is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
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