

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1991 of 2008

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Daroga Rai, Son of Late Sukai Rai, resident of Village- Mitramandal Colony,
Saket Vihar, B/264, Anisabad, P.S.- Phulwarisharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner Cum Principal Secretary,
Department of Industry, Govt. of Bihar, Patna.
2. The Director, Department of Industry, Govt. of Bihar, Patna.
3. The Bihar Industrial Area Development Authority through its Managing
Director, Udyog Bhawan, East Ganchi Maidan, 1st Floor, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18794 of 2010

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1. Nawal Kishore Prasad, S/O Late Lashan Prasad, R/O Kanhauli Bishundutt,
Rajpoot Tola Road, P.O.- R.K. Ashram, P.S.- Bela, Distt.- Muzaffarpur,
presently working as Personal Assistant, Biada, Patna
2. Uma Shankar Prasad S/O Late Aditya Prasad R/O Bajarangpuri, Bajarang
Path, P.S.- Gulzarbagh, Distt.- Patna, presently working as Personal
Assistant, Biada, Patna
3. Shiv Sagar Tiwari S/O Late Dadan Tiwari R/O Vill.-Post- Machhagar
Lachhiram, P.S.- Mirganj, Distt.- Gopalganj, presently working as Peon,
Biada, Patna
4. Arvind Kumar S/O Late Dilkeshwar Sharma R/O B-2, Page Apartment,
Road No.1, New Yarpur, Gardanibagh, P.S.- Gardanibagh, Distt.- Patna,
Presently working as Tracer in Biada, Patna
5. Ashok Kumar Singh S/O Late Ram Janam Singh R/O Vill.- Saidanpur, P.S.-
Gaurichak, P.O.- Nandlala Bagh, Distt.- Patna, presently working as Typist,
Regional Office, Biada, Darbhanga
6. Md. Zeyaur Rahman S/O Late Noorul Ambeya` R/O Mithanpura Chowk,
East, P.S.- Mithanpura, Distt.- Muzaffarpur, presently posted as Senior
Personal Assistant, Regional Office, Biada, Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary Department Of Industries, Govt. of Bihar, Patna
4. The Principal Secretary, Cabinet Secretariat Department, Govt. of Bihar,
Patna
5. The Principal Secretary Finance Department, Govt. of Bihar, Patna
6. The Principal Secretary, General Administration Department, Govt. of Bihar,



Patna

7. The Secretary, Law Department, Govt. of Bihar, Patna
8. The Chairman, Bihar Industrial Area Development Authority, Patna
9. The Managing Director, Bihar Industrial Area Development Authority, Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1991 of 2008)

For the Petitioner/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Lalit Kishore, A.G.

Mr. K.P.Yadav, G.P. 11

(In Civil Writ Jurisdiction Case No. 18794 of 2010)

For the Petitioner/s : Mr.Prashant Sinha, Advocate.

For the Respondent/s : Mr. Lalit Kishore, A.G.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

11 24-09-2020 Petitioner in CWJC No.1991 of 2008 titled as Daroga
Rai Vs. The State of Bihar & Ors. has prayed for the following
relief(s):-

“I. To declare Ultra-virus to Para-2 of Rule 3.2 of Part-II of Bihar Industrial Area Development Authority (Financial Service and Technical) Regulations, 2007 as the said rule should not be effective with retrospective effect.

II. Also for commanding the respondent authorities to not implement the provision mentioned in Para-2 of Rule 3.2 of Part-II of Bihar Industrial Area Development Authority (Financial Service and Technical) Regulations, 2007

To those employees, who had joined before these regulations coming into force (hereinafter



referred to as the Regulations, 2007).

III. Also for directing the respondents to provide all the facilities to employees of the Authority, which was provided earlier to them.

IV. Also for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law.”

Petitioners in CWJC No.18794 of 2010 titled as Nawal Kishore Prasad & Ors. Vs. The State of Bihar Ors. have prayed for the following relief(s):-

“(i) For declaring the Bihar Industrial Area Development Authority (Financial, Service and Technical) Regulation, 2007 (hereinafter to be referred to as Regulation only) as ultra vires to the Bihar Industrial Area Development Authority Act, 1974 (hereinafter to be referred to as Act only) as prior to the notification of the Regulation, no prior approval of the State Government was taken while as per the stipulation of Section-15 read with Section 5 of the Act, under which the Regulation has been framed, the Bihar Industrial Area Development Authority (hereinafter to be referred to as BIADA only) is authorized to frame Regulation with prior approval of the State Government and notifying it in the official gazette by way of Resolution in order to Carry out the purposes of the Act. When information under Right to Information Act (hereinafter to be referred to as RTI only) was requested from the Finance, Law and the Cabinet Secretariat Departments as to whether the prior approval of



these Departments was taken or not prior to notification of the Regulation, and whether such delegated legislation can be made without prior approval of these Departments the said Departments transferred the RTI applications to the Industries Department and the Industries Department transferred the applications to BIADA but the BIADA replied that the Regulation has been notified by the Industries Department Govt. of Bihar particularly neither these Departments nor the Industry Department and not even the BIADA has not denied that approval of these Departments and the State Cabinet was necessary prior to notification of the Regulation.

(ii) For holding that the Regulation has not been framed as per the procedure prescribed in section 15 of the Act and it is an arbitrary exercise of power by the BIADA. As section 5 stipulates that the authority shall have its own establishment and for which it shall frame regulations with prior approval of the state government. On the other hand section 15 of the Act prescribes the procedure for framing of the Regulation. As per the stipulation of section 15 the Authority may with prior approval of the state government, by a resolution published in the official gazette, make Regulation to carry out the purposes of the Act. This procedure requires, firstly the prior approval of the state government, secondly previous publication of the draft of the Regulation by way of Resolution in the official gazette and thirdly the making of Regulation. The purport of the procedure can be gathered from section 26 of the Bihar &



Orissa General Clauses Act, 1917. In utter violation of this procedure the Regulation has been notified in the official gazette without even taking the prior approval of the Finance, General Administration departments as well as the State Cabinet which was required as per the stipulation of the Rules of Executive Business.

(iii) For holding that the Regulation is a colourable legislation in as much as it has been framed under Section-15 and Section- 5 of the Act, which gives power to BIADA to frame and notify such type of Regulation in the official gazette while when information under the R.T.I. was requested from the BIADAA, the BIADAA replied that the Regulation has been notified by the Industries Department. Even, the Regulation has been signed by the Principal Secretary, Department of Industries. Clearly the Industries Department had no power to frame Regulation under Section-15 and Section- 5 of the Act and to notify it in the official gazette.

(iv) For holding that since no prior approval of the State Government was taken prior to framing of the Regulation or notifying it in official gazette many of its provisions goes against the decision of the state Cabinet held on 05-06-2003 as contained in Resolution of 2538 the Industries Department vide Memo No. dated 19-06-2003 in as much as appendix-III of the said Resolution has been arbitrarily changed in the Regulation and many posts which were not identified for Contractual appointment have been shown and later on actually filled by contractual appointees . It would not be out



of place to mention here that the State Government has also got concurrent power to frame Rules under Section-14 of the Act.

(v) For declaring Clause-1.2 of Chapter-1 of Schedule-I and Clause-1.2.1 and Clause-1.2 of part II of the Regulation as ultra vires to the Act as well as the Constitutional provisions in as much as the Regulation has been made applicable upon the employees who are working in the BIADA for two or three decades being guided by the Bihar Service Code and guidelines and circular issued by the Government of Bihar from time to time and they have attained a permanent status. Despite that the new Regulation provides for converting them into Contractual employees, thus, the said Clauses takes away the vested rights of the permanent employees.

(vi) For declaring Clause-1.2 of Chapter-1 of the Schedule-I and Clause-3.2 of part-II of said Regulation as ultra vires to the Act as the Act does not give power to the BIADA to make Regulation with retrospective effect despite that the Regulation is being made applicable upon the employees, who came into service of BIADA many years prior to framing of the Regulation and for all the years they remained guided by the Bihar Service Code and different guidelines and circulars issued by the Government of Bihar.

(vii) For declaring Clause-1 .5 (a) of part-II of the Regulation as ultra vires to the Constitutional provisions particularly Article-14 of the Constitution of India as it gives sweeping and arbitrary power to the Managing Director, BIADA to terminate the



services of any employee of BIADA at any time at his own will without assigning any reason.

(viii) For holding that this Regulation is violative of article 14 & 16 of the Constitution of India in as much as the BIADA has converted and actually filled all the sanctioned posts through contractual appointees as such there is now no promotional avenue for the permanent employees of BIADA. As per settled principles of law the avenue of promotion is necessary for maintaining efficiency in the public employment and any policy which does not provide for avenue of promotion is violative of article 14 & 16 of the Constitution of India.”

Shri Lalit Kishore, learned Senior Counsel appearing for the respondent- Bihar Industrial Area Development Authority, Patna, states that with the passage of time, the present petitions have become infructuous inasmuch as the service conditions of the writ petitioners remained unaltered during the course of their employment, more so on account of interim order dated 20th February, 2008 passed by this Court in CWJC No.1991 of 2008 titled as Daroga Rai Versus the State of Bihar & Ors. whereby the impugned Regulation affecting the petitioner was put in abeyance. Also no action in terms of the Regulation stayed by this Court is sought to be taken against the instant petitioners who have since retired.

Sri Prashant Sinha, learned counsel appearing for



the petitioners in CWJC No.18794 of 2010, clarifies that petitioner No.3 Shiv Sagar Tiwari is still in service to which it is stated at the Bar that no action in terms of the Regulation shall be taken. Further, he would be allowed to retire as per terms of engagement, prior to issuance of the notification.

In view of the same, learned counsel for the petitioners states that no other and further orders are required to be passed in the present petitions.

Statements accepted and taken on record.

Ordered accordingly.

Writ petitions stand disposed of.

Interlocutory application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

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