

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17277 of 2014

1. Ajit Kumar and Anr S/o Late Satya Narayan Choudhary At Pipradih, P.O. and P.S. Morama, District Banka Bihar, Pin Code - 813107.
2. Deepak Kumar Choudhary S/o Pralad Choudhary At Pipradih, P.O. Morama, District Banka Bihar, Pin No. 813107.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Secretary, Rural Development Department, Government of Bihar, New Delhi.
3. The Secretary, Finance Department, Government of India, New Delhi.
4. The State of Bihar. null null
5. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jainendra Kumar, Adv.
For the State	:	Mr. Akhileshwar Singh, AC to GA 2
For the U.O.I.	:	Ms. Kanak Vea, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 30-11-2022 1.The petitioner by way of this writ petition has
prayed as under:

“1. That the petitioners invoke the writ jurisdiction and craves for the indulgence of this Hon’ble High Court for issuance of appropriate writ’s, order’s, direction’s

(A) For directing the respondent no. 4, 5, 6 to immediately regularise/ absorb the petitioners in the line Department in accordance with the Guidelines of DRDA Administration Scheme.

(B) For directing the respondent no. 1,2 and 3 to draw a plan for the immediate regularization of the petitioners in the line department of the DRDA as has been done in other States, in case the respondents 4, 5 fail to regularize the petitioners.

(C) For directing the respondent no. 1,2 and 3 to evolve a uniform plan/ policy for regularization of the DRDA borne staffs in the line departments, so as to do away with the State-wise disparity which is prevailing right now.

(D) For any other relief’s to which the petitioner are found entitled to in the facts and circumstances of the



case.”

2. The guidelines of the any absorption scheme is not enforceable. No right of absorption is available to a person as held by the Supreme Court in case of **Avas Vikas Sansthan & Anr. Vs. Avas Vikas Sansthan Engineers Assn. & Ors. 2006 (4) SCC 132.**

“49. In Rajendra v. State of Rajasthan [(1999) 2 SCC 317 : 1999 SCC (L&S) 551] and S.M. Nilajkar v. Telecom District Manager [(2003) 4 SCC 27 : 2003 SCC (L&S) 380] where a project has been shut down due to want of funds the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. This finding is applicable in the present matter and therefore the finding of the High Court is not fair to common conscience and also that the same will act as a disincentive to the State to float such schemes in future, thereby reducing the employment opportunities of many.

50. It is settled law that the power to abolish any civil post is inherent in every sovereign Government and such abolition will not entail any right on the person holding the abolished post the right to re-employment or to hold the same post. In the present case, the State Government was benevolent enough to float a scheme to absorb such employees whose posts were abolished. Therefore, in our opinion, the arguments advanced by the counsel for the respondents with regard to unfairness meted out to the employees of the Avas Vikas Sansthan hold no water.

51. With regard to 604 employees of AVS, it was argued that the State of Rajasthan had no legal obligation to offer alternative employment to the erstwhile employees of AVS. But the State of Rajasthan in all fairness did frame a scheme and offered employment in other local bodies of the Government. Thus, the terms and conditions of such alternative employment cannot be challenged. We are of the opinion, that the decision of the High Court granting relief



of re-employment with pay protection, seniority and pension is erroneous. We, therefore, direct the State of Rajasthan to strictly adhere to and implement its decision to offer employment in other local bodies in letter and spirit.

3. Similarly, it has been taken by the Apex Court in relation to DRDA guidelines also reported in **Rajendra & Ors. Vs. State of Rajasthan & Ors. 1999 (2) SCC 317.**

“13. In our opinion, when the posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end on account of the need for the project itself having come to an end either because the project was fulfilled or had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have the funds available for the purpose. The decision taken by the respondent-State to abolish the posts was a bona fide decision taken after due application of the mind by appointing an Expert Committee which went deep into all relevant considerations and made recommendations in the interest of rationalisation. The decision is based on administrative and financial considerations. There is nothing wrong in the Societies having acted on the policy decision of the State Government. Really speaking, there was hardly anything left to be done by the DRDA Societies at their own end. Inasmuch as the Societies did not have any funds of their own, independent of those made available by the State Government, how could the Societies have continued with the posts and the incumbents thereon though they were left with no means to pay salaries attaching with the posts?

14. An attempt was made by the petitioners to bring in some new material on record to raise a plea that a few years after the abolition of the posts, the respondents have opened new avenues of employment whereagainst the petitioners could be



accommodated. The respondents have disputed such stand taken on behalf of the petitioners. We find it difficult to entertain such plea taken at this stage and sustain the same when no reliable material has been placed before us to uphold such plea of the petitioners. In fact, a similar attempt was made before the Division Bench also by the petitioners moving an application for review of the judgment of the Division Bench but the review petition was dismissed by the Division Bench forming an opinion that a new plea was not open for consideration in review jurisdiction of the court and if at all there was any substance in such plea of the petitioners, then it provided a new cause of action enabling the petitioners to file a fresh petition. In our opinion, the Division Bench was right in taking the view which it did. From the affidavit filed on behalf of the State of Rajasthan and the figures placed before us in the form of a tabular statement, we are satisfied that the State has already made efforts at accommodating dislodged employees of one DRDA in other DRDAs as far as possible. There are no transferees/deputationists from the Government occupying posts meant for LDCs or Class IV in the DRDAs and therefore the petitioners' plea that they may be accommodated by repatriating such governmental employees has no merit and no foundation."

4.Keeping in view thereto, no case for interference is made out.

5. The writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

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