

Bihar Rajya Vidyut Parishad Field Kamgar Union

Vs

State of Bihar and Others

Writ Petition (Civil) No. 13989 of 1984

(CJI R. S. Pathak, V. Khalid JJ)

29.06.1987

JUDGMENT

PATHAK, C.J. -

1. The petitioner Union has filed this petition under Article 32 of the Constitution complaining that the workmen who are its members were employed in the Karbigahiya Power Station under the control and operation of the respondents, the Bihar State Electricity Board and the Patna Electricity Supply Undertaking, through a contractor, J. N. Sinha & Co., who had been given a contract for the supply of labour. It is alleged that a settlement was reached between the Bihar State Electricity Board and the Bihar State Electricity Supply Workers Union, and that the workmen-members of the petitioner are entitled to its benefits. It is said that the Joint Labour Commissioner of Bihar has directed the Bihar State Electricity Board to extend the benefit of the settlement to those workmen but that there has been no compliance. It is asserted that the workmen are employed for the filling of Boilers Hoppers in the Karbigahiya Power House, that the job is of a permanent nature, and by not absorbing the workmen the Bihar State Electricity Board and the Patna Electricity Supply Undertaking are violating the terms of the settlement. It is contended that persons similarly placed in the Barauni and Patratu Thermal Power Station, and performing jobs of a similar nature, have been absorbed in the Bihar State Electricity Board labour force but the workmen who are members of the petitioner are being discriminated against.

2. The writ petition is opposed by the Bihar State Electricity Board. In the first place it is urged that no writ petition under Article 32 of the Constitution is maintainable as there is no violation of any Fundamental Right. It is further pointed out that the question now raised in this writ petition was also the subject of a writ petition before the High Court filed by the Secretary of the petitioner Union and that the writ petition has been dismissed by a Division Bench of the High Court, and that as the petitioner is guilty of suppressing this material fact this writ petition is liable to dismissal on that ground alone. On the merits it is urged by the Bihar State Electricity Board that the workmen concerned were never employed by it, that the work of filling the Boilers Hoppers is not of permanent nature and is given on temporary contract for a limited period, that the contract with the contractor firm was not for supply of labour but was a contract for work, and that it is not reasonable to claim permanent employment when the nature of the work itself is of temporary duration. It is also asserted that the settlement on which the petitioner relies was effective only during the period of its operation and has since been terminated by a notice dated February 6, 1972 under Section 19(2) of the Industrial Disputes Act, that in terms the clauses of the settlement do not apply to the workmen concerned and no question arises of absorbing these workmen. It is contended further that the Joint Labour Commissioner had no power to issue directions in the matter because he was concerned merely with conciliation proceedings. It is pointed out further that the entire

system is undergoing a change and the work of filling Boilers Hoppers is being completely mechanised and human labour will not be deployed.

3. It is apparent from the relative positions taken by the parties that there is considerable dispute in regard to material facts and that the dispute is of a nature which cannot be conveniently adjudicated in this writ petition. It is a dispute which, it seems to us, is more appropriate of adjudication under the Industrial Disputes Act. We must, therefore, decline to interfere in this matter before us.

4. The writ petition is dismissed but there is no order as to costs.

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