

Santosh Kumar Verma and Others

Vs

State of Bihar Through Secretary, Department of Urban Development, Govt. of Bihar, New Secretariat, Patna and Others

Civil Appeal No. 445 of 1997

(K. Ramaswamy, S. Saghir Ahmed JJ)

17.01.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the order of the Division Bench of the Patna High Court, made on 11-9-1996 in LPA No. 788 of 1995.

3. The admitted position is that the appellants came to be appointed as Assistant Engineers on daily wages @ Rs. 40 per day on 16-11-1987. Subsequently, they were placed in the pay scale of Rs. 880-1510 per month. They came to be selected by conducting examinations and the appointments, accordingly, came to be made. An attempt was made by the 2nd respondent, Regional Development Authority to regularise the services and the proposal was sent to the Government for acceptance. The Government accepting the proposal had referred the matter to the Public Service Commission. Since the Public Service Commission did not agree to the regularisation of their services, the appellants filed writ petition in the High Court for a mandamus directing the authority to regularise their services. The High Court in the impugned order refused to give directions. Thus, this appeal by special leave.

4. Mr. Gopal Subramaniam, learned Senior Counsel appearing for the appellants, contends that Section 6(3) of the Bihar Regional Development Authority Act, 1981 (for short "the Act") gives power to the Authority to appoint the Secretary and other officers and employees of the Authority. Under proviso thereto, the appointing authority has the power to appoint any person for a period not exceeding six months on any post carrying a minimum salary of Rs. 500 and above after approval of the State Government and the appointment though for six months will be on regular basis. The authority has not made any statutory rules for the mode of recruitment. The advertisement did not indicate that these were temporary appointments. Therefore, the appellants are entitled to be regularised in the service. We find no force in the contention.

5. Section 6(3) of the Act only empowers the Authority to appoint the Secretary and other officers and employees of the Authority. The power under the proviso is only a breathing elbow power given to the Authority to make temporary appointments so that the work of the Development Authority goes on pending recruitment. Therefore, when the advertisement was made for the recruitment, it was obviously in furtherance of the power flown under the proviso for a limited period. Thereby, the appointments obviously are only temporary appointments. The appellants realising the limited temporary tenure of the appointments had sought assistance of the Government for regularisation which was negated by the Public Service Commission. It is seen that these posts

are within the purview of the Public Service Commission. Therefore, the Government sought the concurrence of the Public Service Commission and the Public Service Commission had not concurred and, in our view, correctly with the request made by the Government. Therefore, any regularisation in violation of the recruitment to be made by the Public Service Commission is in contravention of the law. The High Court, therefore, rightly did not issue any mandamus for regularisation of the services made in contravention of the Rules and no mandamus or direction would be issued to violate law.

6. The appeal is accordingly dismissed. No costs.