

Supreme Court of India

Dr. Shashi Kant And Anr. vs State Of Bihar And Ors. on 29 June, 1987

Equivalent citations: JT 1987 (3) SC 11, 1987 (2) SCALE 11, (1987) 3 SCC 505

Bench: R Pathak, B Ray, V Khalid

ORDER

1. The application prays that contempt proceedings be taken against the Commissioner, Department of Health, in the Government of Bihar for failing to comply with the directions of the Patna High Court contained in its judgment dated 14 June 1983, passed in a writ petition filed by the petitioners, whereby the High Court directed that the vacant positions occupied by ad hoc appointees of the years 1979 and 1981 as well as posts which might have fallen vacant or be otherwise available should be filled up on a regular basis through the Public Service Commission by open advertisement, and that the vacancies should be so filled within six months from the date of the judgment. This was subject to the proviso that the Government could make ad hoc appointments during the interim period if it considered it absolutely urgent and necessary as a stop gap measure. It was made specially clear by the High Court that all the ad hoc appointments made in the years 1979 and 1981 subsisting then or to be made as permitted by it would stand automatically terminated if the Government did not fill up those vacancies on a substantive basis within a period of six months from the date of the said judgment. An injunction was issued restraining the Government from taking any other measures for filling up those vacancies except as directed by the High Court. The period of six months would have expired by 13 December, 1983. The State of Bihar filed a special leave petition in this Court against the High Court judgment. The only point raised on behalf of the appellants related to the reasonableness of the period of six months granted by the High Court for making appointments on a regular basis. The appeals were disposed of by this Court by extending the time of six months. stipulated by the High Court to 28 February 1985. It appears that the State of Bihar in the Health Department took no action to comply with the specific directions of the High Court within the time enlarged by this Court. On the contrary, the Governor of Bihar enacted the Bihar State Health Service (Basic Grade) Recruitment Rules 1984 in purported exercise of the power under the proviso to Article 309 of the Constitution. While the Rules generally contemplate that recruitment will be affected by holding a written examination by the State Public Service Commission and a viva voce test, Rule 19 carves out an exception in the case of medical officers already employed in service on a temporary or ad hoc basis.

2. The petitioners then filed the present application for contempt proceedings. Before the matter could be heard by us the Governor of Bihar enacted also the Bihar Gazetted Officers' ad hoc appointments Regularisation Ordinance, 1986 with a view to regularising ad hoc appointments made by the State Government by direct recruitment to gazetted posts continuing on an ad hoc or temporary basis up to 30 June, 1986.

3. During the hearing of the contempt application it was urged on behalf of the petitioners that the appellants were guilty of contempt because they had wilfully refrained from complying with the directions of the High Court within the period allowed by this Court and that the enactment of Rule 19 of the Rules aforesaid could not absolve the appellants from complying with or giving effect to the directions of the High Court. On behalf of the State of Bihar and other appellants it was contended

that it was perfectly open to the State of Bihar to enact Rule 19 under the proviso to Article 309 of the Constitution and in doing so there was no attempt to reverse the directions of the High Court and that it was intended merely to remove the basis of the law on which the High Court had proceeded so that the direction of the High Court thereby became automatically inoperative. There were other questions also raised. It seems to us that the matter is one of considerable importance and it should be heard and disposed of by a larger Bench. In the circumstances we refer this case to a larger Bench. The papers will be placed before the Hon'ble the Chief Justice of India for the Constitution of a Bench to hear and dispose of this contempt application.