

(2016) 05 PAT CK 0066

In the Patna High Court

Case No : Letters Patent Appeal No. 1560 of 2013 in Civil Writ Jurisdiction Case No. 20210 of 2012

Bihar School Examination Board

APPELLANT

Vs

Anuj Kumar Singh

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Bihar Agricultural Produce Market (Repeal) Act, 2006 — Section 6
Bihar Intermediate Education Council (Repeal) Act, 2007 — Section 3

Citation : (2016) 3 BLJud 182 : (2016) 3 PLJR 506

Hon'ble Judges : Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Satyabir Bharti, Ms. Aparna Arun and Mr. Alok Chandra, Advocates, for the Appellant; Mr. Siya Ram Shahi, Mr. Sunil Kumar and Mr. Susant Kumar, Advocates, Mr. Amaresh Kumar, AC to SC-15, for the Respondent

Final Decision : Allowed

Judgement

Mr. Navaniti Prasad Singh, J.(Oral)—The Bihar School Examination Board (for short the Board) is in this intra-court appeal assailing the judgment and order dated 19.06.2013, passed in C.W.J.C. No. 20210 of 2012 whereby learned Single Judge allowed the writ petition filed by the respondents herein and directed their absorption with full continuity with the Board. The Board challenges the correctness of the judgment on a very short ground.

2. With the consent of parties as all parties are represented, we have heard them for final disposal of the appeal at this stage itself.

3. The facts are not in dispute. The writ petitioners-respondents admittedly were working as daily wagers though for more than a decade in the Bihar Intermediate Education Council (for short the Council) as Assistants and Routine Clerks. In 2007, State Government decided to abolish the Council and subsequently to entrust the Board with the duties of supervising and conducting courses leading to intermediate qualification. Accordingly, Bihar Intermediate Examination

Council (Repeal) Act, 2007 was passed; Section 3 thereof was a transitory provision safeguarding the interest of the employees of the erstwhile Council. It, inter alia, provided that all the employees, who were working in the Council, would be deemed to be continuing to work, as such, notwithstanding repeal and abolition of the Council. A statutory Committee would be set up to look into their status and their placement in any Government position or Government control body and be absorbed therein.

4. According to the writ petitioners-respondents herein, a Five Men Committee was formed by the Government and the Committee wrongly rejected the case of the writ petitioners-respondents for absorption in terms of Section 3 of the said Act. The learned Single Judge, in the writ proceedings, allowed the writ petition with a direction to the State to absorb the writ petitioners-respondents, hence, this intra-court appeal.

5. Sri Satyabir Bharti, learned counsel appearing in support of the appeal and for the Board submits that before the learned Single Judge the report of the Five Men Committee was brought on record. The report clearly showed that the writ petitioners-respondents had been working for over a decade but as against non-sanctioned posts. It was also brought on record the fact that the Chairman of the Board had requested recently the Government, to sanction the posts for absorption of the writ petitioners and their likes in view of the fact of their experience gained for over a decade. Sri Bharti drew our attention to these facts to show that being appointed as a daily wager against non-sanctioned post they would not fall within the term 'employee' under Section 3 of the Repealing Act. He further draws our attention to the case of Nand Kumar v. State of Bihar and others since reported in (2014) 5 SCC 300 dealing with a *pari materia* provision as contained in the Bihar Agricultural Produce Market (Repeal) Act, 2006 wherein Section 6 was in *pari materia* to Section 3 herein. The Apex Court affirming the Division Bench judgment of this Court clearly held that daily wagers would not qualify for consideration under Section 3 of the Market Repeal Act. Parity of reasoning would, thus, apply.

6. On the other hand, Sri Siya Ram Shahi, learned counsel appearing on behalf of the writ petitioners-respondents herein submits that it is not disputed by the Five Men Commission that the writ petitioners had been working in some cases for almost 20 years and, therefore, now to deprive them of the benefit, specially when the same work is to be done now by the Board, and though the same work would be taken by the Board, would be unjust and arbitrary. He further submits that even otherwise the State Government in view of resolution bearing Memo No. 639 dated 16.03.2006 should consider absorbing the writ petitioners. He further drew our attention to the letter of the Chairman of the Board to the State Government which points to the plight of these writ petitioners-respondents requesting for further sanction of posts so that the writ petitioners and their likes could be absorbed keeping in view the great experience that they had gained over one and half decades that they have worked and also their necessity

considering the work load.

7. We have considered the matter. In our opinion, the learned Single Judge was not correct in so deciding the case. For convenience, we are quoting hereunder relevant part of Section 3 of the Bihar Intermediate Education Council (Repeal) Act, 2007 as also relevant part of Section 6 of the Bihar Agricultural Produce Market (Repeal) Act, 2006 :

"3. Adjustment of employees of the Bihar Intermediate Education Council - (1) On and from the date of repeal of the Bihar Intermediate Council Act, 1992, all employees of the Council, shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time State Government has taken such final decision as is provided hereinafter.

2. The State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of employees of the Council. The scheme prepared by the Committee of Secretaries shall be placed before the Government within four months from the date of enforcement of the present Act.

Provided that it shall be open to the Government to modify, amend or suggest modifications or amendment in the scheme and the scheme thereafter shall be made operational in such form and intent as finally approved by the Government. Scheme approved by the Government shall be considered as statutory scheme framed under this Act".

"6. Absorption of officers and employees of Bihar Agriculture Marketing Board/ Market Committee/Bazar Samiti.

- (i) On and from the date of repeal of the Act, all officers and employees of the Board, shall remain in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time the State Government has taken such final decision as is provided hereafter.

(ii) The State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, other service conditions of officers and employees of the Board and the Committee. Scheme prepared by group of Secretaries shall be placed before the State Government within two months from the date of enforcement of the present Act. The State Government shall thereafter approve the scheme:

Provided that it shall be open to the Government to modify, amend or suggest modification or amendment and the scheme thereafter shall be made operational in such form and intent as finally approved by the State Government. Scheme approved by the State Government shall be considered as statutory scheme

framed under this Act."

8. A bare reference to the two provisions would show that they are in pari materia, therefore, the judgment of the Supreme Court in the case of Nand Kumar (supra) would equally apply and daily wagers would not get the benefit of Section 3 of the Bihar Intermediate Education Council (Repeal) Act, 2007. On this ground alone, the appeal has to be allowed and the judgment and order of the learned Single Judge has to be set aside.

9. We may also notice that recently in a batch of Letters Patent Appeal, we have taken the same view being L.P.A. No. 1837 of 2007 and analogous appeals decided on 09.05.2016.

10. But, in our view, the matter does not end here as Mr. Shahi for the writ petitioners-respondents herein submits that it would not be fair to throw the writ petitioners on the road after they had spent 15-20 years in the service. He draws attention of the Court to the letter of the Chairman of the Board which recognises their experience and also recognises the need for more hands and thus asking the Government to immediately sanction additional persons. From the aforesaid communication, it is very clear that the Council though had a very restricted number of sanctioned posts, in fact, to work effectively to conduct examinations was requiring much larger work force as all the duties and liabilities of the Council has now come and is vested in the Board in relation to Council. The same would be the case here and, therefore, the necessity of experienced employees like the writ petitioners-respondents. We, at this stage, cannot issue an appropriate direction except directing the State, which is a welfare State, to consider the case of the writ petitioners-respondents in light of the Government resolution as noticed above. This must be done in true earnest by the State Government at the earliest.

11. With these observations and directions, this appeal stands allowed.