
(2013) 02 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4840 of 2006

Lal Babu Khan and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Jharkhand Agricultural Produce Markets Act, 2000 — Section 20(4)

Citation : (2013) 2 JLJR 126

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; V.P. Singh, Mrinal Kanti Roy, Sahja Nand Sharma and Amrita Kumari for the Respondent Nos. 3 and 4, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The prayer for adjournment has been made once again, which is being refused as the matter was adjourned on the last date by way of last indulgence on the request of the learned counsel for the petitioners.

2. The petitioners have prayed for quashing the order dated 10.1.2006 passed by the respondent no. 2, Managing Director, Agriculture Produce Market Committee, Jharkhand, Ranchi by which it has been decided to appoint the petitioners on contract basis for one year.

3. The case of the petitioners is that they were working for last 22 to 26 years as daily wages employees and the matter of regularization has been pending before the authorities. Petitioners claim regularization on the post of Marketing Supervisor and other posts in view of Section 20(4) of the Jharkhand Agriculture Produce Market Act. The individual case of the petitioners is that the petitioner no. 1 was appointed on 11.10.1980 to the post of Market Supervisor on payment of Rs. 10/- per day, Annexure-1. His services were terminated by the Market Committee, Jamtara vide order dated 21.1.1982, which was communicated vide

letter dated 25.1.1982. Thereafter, he moved before the Patna High Court in C.W.J.C. No. 441 of 1982 whereby order of termination was quashed vide order dated 19.11.1982. The petitioner no. 1 after his rejoining w.e.f. 21.1.1982 claims to be in continuous service under the respondents. It is the contention of the petitioner that allowances and salary of the petitioner have been revised from time to time and he has made a request for regularization of his service.

4. The petitioner no. 2 also claims to be working on the post of Market Fee Collector on 31.3.1980. He also claims for regularization on the basis of communication made earlier by the Regional Director, Agriculture Produce Market Committee, Bhagalpur in the year 1983 and subsequently also by the Market Committee vide Resolution dated 12.6.1995.

5. The petitioner no. 3 is said to be appointed on daily wages in Class-IV Post and his wage is enhanced from time to time and he is getting the basic salary plus Dearness Allowances on the basic scale of Rs. 2,650/-.

6. These petitioners allege that despite decisions have been taken for their regularization as back as in the 1980's till date their services have not been regularized. Earlier petitioners had moved before Patna High Court in C.W.J.C. No. 435 of 2001, which was disposed of vide order dated 1.2.2001 directing the respondent no. 2, Regional Director, Ranchi to dispose of their representation by speaking order. However, the Regional Director, Agriculture Produce Market Board, Pandra, Ranchi had rejected the representation of the petitioners. It is submitted that subsequent litigation has further ensued due to filing of the Cont. (Civil) Case No. 434 of 2005. After filing of contempt petition, the impugned order has been passed mechanically directing the respondents to appoint them on contract basis for one year. The petitioners are working as daily wages employees and their services has not been terminated and even they are receiving salary for the said posts on the basis of equal pay for equal work. Therefore, they have compelled to move before this Court in the present case.

7. Respondents have appeared through Senior Counsel Mr. V.P. Singh and also filed their counter affidavit. The stand of the respondents is that the Bihar State Agriculture Marketing Board Employees Service Regulation, 1978 (hereinafter to be referred as the Services Regulation only) was framed by the Board u/s 33L(C) which came into force in the year 1978. Under the provisions of Section 33E(3), the Board was empowered to constitute cadre of officers and other servants common to all committees. The Services Regulation provides the procedure for selection and appointment of employees for all or any Market Committee. By order dated 10.5.1982, a ban was imposed on the appointment of persons in the Public Enterprises on Class-III and IV posts. It is stated that after coming into existence of the State of Jharkhand in the year 2000, the Jharkhand State Agricultural Marketing Board was constituted in the month of March, 2001. It is also stated that a writ application being CWJC No. 9198 of 1998 (P) was filed by another person, who was working on daily wages as Market Supervisor, claiming for regularization of his services. The same was decided on 6.9.2002 whereby a

direction was issued to Board to fill up all posts of Marketing Supervisors lying vacant in Market Committees in accordance with law. The Hon'ble High Court also directed the Board to consider the cases of the said petitioner and other similarly situated persons and qualified daily wage employee and also to give relaxation of age, if need be. Thereafter, advertisement was issued in the news paper on 16.5.2004 inviting application for the post of Market Supervisors. Nearly 13719 applications were received for about 40 posts and after test and interview, some persons were selected. Some of the applicants, who were not selected, challenged the selection process. Thereafter, on the direction of the State Government, earlier selection made by the Board was cancelled. Thereafter, Jharkhand Public Service Commission issued advertisement and after completion of the said selection exercise, the names of selected candidates were recommended by JPSC, who have been appointed by Marketing Board as per the direction of the Hon'ble High Court. The petitioners have not been selected in the selection process undertaken by the JPSC. Thus, they cannot be allowed to claim regularization. Learned counsel for the respondents submits that even in the aforesaid background, on humanitarian consideration, the petitioners have been allowed to work on contractual basis by the impugned order. The contention of the Board is that they have never approved the selection and appointment of the petitioners.

8. I have heard learned counsel for the parties. These facts, which are borne out from the record clearly show that these petitioners have been appointed on daily wages/contractual basis by the Marketing Board from different years in the year 1980 and 1983 respectively and have worked thereafter in different Marketing Committees. However, a direction was passed by this Court in a writ petition preferred by one of the daily wagers, on the basis of which examination was conducted for selection of eligible candidates by giving age relaxation to such persons, who were working on daily wages basis. The persons like these petitioners were eligible to participate and have participated, however the selected candidates have been appointed on the post of Marketing Supervisor in the Board by following the mandate of Articles 14 and 16 of the Constitution of India. These petitioners, however, do not appear to have come out successful in the list of successful candidates under the said selection exercise and on humanitarian ground, they have been allowed to work on contractual basis by the Marketing Board. The petitioners are still continuing in service.

9. In these circumstances, this Court is constrained to issue any direction for regularization of petitioners in question. However, the respondent-Board, has allowed these petitioners to work on daily wages or contractual basis even till today after they were initially engaged earlier in different years in early 1980s. A humanitarian approach be taken so far as these petitioners are concerned, who cannot, be thrown out of services at this age when they may face difficulty in any other employment with so many dependants to maintain.

10. However, this observation should not be treated as precedent in other cases.

Accordingly, this writ petition is disposed of.