
(2008) 09 PAT CK 0054
In the Patna High Court
Case No : CWJC No's. 14599 of 2006

Munna Kumar Rajak

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Bihar Agricultural Produce Market (Repeal) Act, 2006 — Section 4, 6, 6(i)
Industrial Disputes Act, 1947 — Section 2(cc), 25(FFF), 25F

Citation : (2009) 2 PLJR 478

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioners and learned counsel for the State and erstwhile Marketing Board. Interlocutory application No. 5206 of 2008 has been filed in C.W.J.C. No. 5152 of 2007 which is a substitution petition. Since the petitioner has died during the pendency of the writ application, Interlocutory Application is allowed. Let legal heirs indicated in paragraph No. 1 namely Mostt. Punam Devi be substituted in place of petitioner No. 2 namely Late Satrudhan Prasad.

2. In all these writ applications the petitioners are daily wage employees of the erstwhile Bihar State Agriculture Produce Marketing Board which now stands dissolved/abolished in terms of an enactment which is Act 23 of 2006, known as Bihar Agriculture Produce Marketing (Repeal) Act, 2006.

3. The petitioners have no quarrel with regard to the enactment and the policy behind the enactment more so after its validity has been upheld in the case of Bihar Rajya Ardh Sarkari Nikay Padadhipari Sangh and Others Vs. The Union of India (UOI) and Others .

4. By virtue of this enactment in terms of Section 4, all the assets and liabilities of the Board has been vested in the State Government. Section 6 of the Act

relates to Absorption of officers and employees of the Bihar Agriculture Marketing Board which includes the Marketing Committee/Bazar Samitis. Section 6 of the Act is reproduced below for ready reference:-

"Section 6(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of repeal of the Act, all officers and employees of the Board shall remain in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time. State Government has taken such final decision as is provided hereafter.

The State Government shall constitute a committee of Secretaries consisting of three Secretaries who shall prepare detail 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 reprove the scheme:

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

5. A perusal of the above provision of law would show that the State Government was to go by the suggestion and the recommendation of a group of Secretaries which was to be constituted under sub-section (2) of Section 6. Recommendation of Group of Secretaries was rendered and the same came to be notified under the signature of the Joint Secretary, Government of Bihar, Department of Agriculture and is dated 15th March, 2007 (Annexure-13).

6. The petitioners are not concerned with the other recommendations. Their attack or area of concern is Clause 3.6 which deals with the matter of daily wage employees. It states that the daily wage employees would be given a months salary and would be removed immediately thereafter. It is urged at the bar by the counsel appearing on behalf of the petitioners that this recommendation and the notification made by the State Government falls foul of the law in this area rendered not only by a Division Bench of this Court, but special enactment which covers the case of these petitioners, which is the Industrial Disputes Act, 1947.

7. Since the Repeal Act cannot have an overriding effect over all other legislations, as submitted by the petitioners the question to be considered is whether a recommendation notified giving only one month's salary before removal of the daily wage employees of the erstwhile Board is in conformity with the law of the land.

8. One submission or the stand of the petitioners should be fairly recorded. They are not willing to press the question on their reinstatement or absorption beyond

a point, keeping in mind that by virtue of the legislation the body in question stands dissolved and has lost its identity and the validity of the enactment has already been upheld. They are willing to concentrate their attack limited to the kind of a compensation, they would be entitled to by virtue of their removal from the engagement.

9. Cutting short the matter, way back in the case of Bir Bahadur Singh Roy vs. The Bihar Agriculture Produce Marketing Committee in C.W.J.C. No. 334 of 1982, removal of the employees, who were petitioners in the said case was considered by the Division Bench and an order dated 28th July, 1982 came to be rendered. The Division Bench in its opinion held, keeping in mind certain decisions rendered by the Hon'ble Supreme Court that removal of employees in the manner without taking recourse to the provisions of Section 25F of the Industrial Disputes Act would amount to retrenchment and would render such action to be illegal and invalid exercise. The Court categorically laid down that any such decision to remove an employee who were held to be a workman would require the marketing board to follow the mandatory requirements of Section 25F of the Industrial Disputes Act. Even as of today, this decision of the Division Bench has not been interfered with at any stage. In fact on many an occasions the various Benches of this Court based on the Division Bench decision have interfered with the removal or retrenchment of employees as Section 25F had not followed. It is not disputed that thereafter the erstwhile Marketing Board have been extending compensation enshrined u/s 25F before removing an employee. In other words there is not much dispute on the issue that there is a kind of judicial protection if not a statutory protection available to the daily wagers who are sought to be removed now, by the State Government as the repository of all assets and liabilities under the Act. Is the State therefore bound to follow the requirements of Section 25F of the Industrial Disputes Act?

10. The Court had occasion to be addressed and assisted in the matter both by the counsel appearing for the dissolved Marketing Board as well as the State Government. Their primary submission is that since the body in question has been statutorily dissolved by way of enactment then any decision taken by the Government to get rid of the services of the employees will be in accordance with the policy and the notification which came to be issued based on the recommendation of the Three Members Committee. If the Three Members Committee in its wisdom came to an opinion that a months pay is enough for removal of these employees then nothing more is required to be done by them in this regard. They also urge that these petitioners did not have any vested right beyond what has been provided for them under the Repeal Enactment and the consequential recommendation of the Three Members Committee which has come to be rendered and notified on 15th March, 2007 (Annexure-13). This notification has the approval of the Cabinet and therefore, the matter should be allowed to rest at that.

11. The submission made on behalf of the respondents is a very simplistic

interpretation to the various legislative enactment which still occupy the field in this regard. If only the State Government had the freedom of making an enactment by rendering all other law in this regard redundant then may be the submissions on behalf of the State or the Marketing Board could have been readily accepted on the face, but the Court is conscious of the fact that neither the Repeal Act nor the recommendation duly notified based on the Three Members Committee has an overriding effect over all other law in this regard much less Industrial Disputes Act, 1947.

12. In the backdrop of the decision of the Division Bench rendered in the case of Bir Bahadur Roy as well as the other submissions which has been taken note of by this Court, the court comes to considered opinion that keeping in mind the long period of service which majority of these petitioners have rendered under the respondents, the State being a Welfare State and a model employer has no liberty to give a go by to welfare legislation like the Industrial Disputes Act. Some of these employees I have been told have rendered service for 15 to 30 years and given the best part of their life working under the organization. They did not take a decision, for whatever reasons, to regularize them and extend benefit despite prolonged association with the erstwhile Marketing Board. It will be unfair on the part of the State as the law stands, to be allowed to shake off their liability and sever the relationship by giving a months pay as a parting gift to such employees.

13. The Court therefore, holds that Clause 3.6 by virtue of which the respondents-State has refrained from giving compensation u/s 25F is in violation of the statute to that extent. The respondents have a duty to work out the liability of these petitioners in accordance with the provision of Section 25F of the Industrial Disputes Act and take steps for payment of the compensation depending upon the length of service which the petitioners have rendered under the respondents. Even if for the sake of argument, the abolition of the erstwhile Marketing Board is treated as a case of "closure", within the definition of Section 2(cc) of the Industrial Disputes Act, 1947, even then u/s 25(FFF) the compensation is similar in nature to Section 25F. All the writ applications are allowed to that extent indicated above and are disposed of with a direction upon the respondents to do the needful.