
(2009) 12 PAT CK 0046

In the Patna High Court

Case No : CWJC Nos. 16109 of 2008, 2133, 2316, 2292, 3511, 4224 of 2007

Nand Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Repeal Act, 2006 — Section 3, 5, 6, 6(i), 6(ii), 6(iii)
Bihar Agriculture Produce Market Act, 1960 — Section 4
Constitution Of India, 1950 — Article 14, 16

Citation : (2009) 12 PAT CK 0046

Hon'ble Judges : Shiva Kirti Singh, ACJ; Shyam Kishore Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These six writ petitions alongwith two others were clubbed together for hearing and disposal at the stage of admission itself. But on account of

substantial difference in facts as well as legal issues, two writ petitions have been separated and shall be governed by a separate judgment. In all these

six writ petitions the petitioners were initially appointed on daily wages. The petitioners continued for several years. In the case of Nand Kumar

(CWJC No. 16109 of 2008), petitioner was appointed about 27 years earlier. He has worked as accounts clerk and claims to have received monthly

salary in the minimum of pay scale with dearness allowance and other allowances for the last about 27 years. For the sake of convenience, the facts

as well as relevant annexures shall be from the records of this writ petition.

2. The State Legislature passed the Bihar Agriculture Produce Market (Repeal) Act, 2006 (the Repeal Act 2006) effective from 1.9.2006. As a

result of Section 3 of the Repeal Act 2006, the Bihar Agriculture Produce Market

Act, 1960 (hereinafter referred to as "the Act of 1960") and the Rules of 1975 framed thereunder stand repealed but certain decisions rendered earlier as well as disciplinary proceedings initiated or pending against the employees of the Board are saved. Under Section 4, the assets and liabilities of the Bihar Agriculture Produce Marketing Board or of the Marketing Committees or Bazar Samiti constituted under the Act of 1960, have vested in the State Government. The State Government by virtue of Section 5 has power, authority and jurisdiction to issue necessary directions or orders to secure the object of the Repeal Act 2006. Section 6 which is relevant for the purpose of these cases provides for absorption of officers and employees of Bihar Agriculture Marketing Board/Market Committee/Bazar Samiti. The main issue falling for consideration in these cases is common viz. whether the daily wage employees like the petitioners are included in the, words "all officers and employees" as used in Section 6(i) of the Repeal Act 2006 and whether the Committee of Secretaries constituted under Section 6(ii) can prepare a scheme denying absorption on the ground of employees being appointed by the Board/Market Committee/Bazar Samiti on daily wages or is it obliged to prepare a scheme in which absorption of such employees must also be provided for. For the sake of convenience and easy reference, Section 6 is extracted hereinbelow:

"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 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 State 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.

(iii) After the scheme approved by the State Government is enforced it shall be fully implemented in its form and intent within three months from the date of its enforcement.

(iv) Group of Secretaries constituted under sub-section (ii) above shall be competent to decide utility and deployment of offices and employees of the Board or the Committee during transition period and it shall not be open to any officer or employee to question decision of group of Secretaries.

(v) Scheme framed under this Act shall have effect, notwithstanding any other Act, Ordinance, Rule, regulation, direction, order or instruction and condition of service of officers and employees of the Board or the Committee, shall be governed and regulated under the scheme to the extent provision has been made in the scheme:

Provided further that it shall be competent for the State Government to amend, modify, alter or substitute the scheme so framed for removal of difficulties in implementation of the scheme.â??

3. On behalf of the petitioners a strong emphasis was led on Section 6 of the Repeal Act 2006 to submit that it provides only a scheme for absorption, and there is no liberty or scope granted to classify the officers and employees of the Board into those who entered as daily wagers and those who entered as regular employees. As a corollary of such submission, the resolution of the State Government in the Department of Agriculture dated 15.3.2007 contained in Annexure-B to the counter affidavit was also assailed, particularly clause 3.6 of the resolution, on the same ground that it was not permissible or open for the Government or the Committee to decide that workers employed on daily wages shall be removed from service immediately after paying salary for one month.

4. The second submission advanced on behalf of the petitioners, who entered service as daily wagers, is based clearly on equity and compassion that after such long period of service they should not be removed from service only on the ground that they were engaged on daily wages. Attempt was

made to take advantage of the fact that these petitioners have been getting salary in the minimum of the scale alongwith certain allowances for long number of years.

5. So far as first submission is concerned, in our view, it suffers from a misconception that persons, who are employed as daily wagers, stand on same footing of officers and employees of the Board in regular employment. Section 6(i) itself makes it clear that after the repeal of the Agriculture

Produce Market Act, 1960, all officers and employees of the Board are to continue in employment as if the Act had not been repealed and they shall

continue to be paid what they were getting earlier as salary and allowances till such time the State Government takes a final decision as per further

provisions of Section 6. The effect of such provision is to allow officers and employees of the Board to continue in employment on the same footing

and status as existed prior to the Repeal Act 2006 till such time the State Government takes a final decision as provided under the Repeal Act 2006.

This provisions itself maintains the distinction between the status of daily wage employees and the regular employees of the Board. By no stretch of

imagination such provision can be construed so as to treat the daily wage employees like the petitioners to have acquired same status as the regular

employees only because the Board as per Act of 1960 stood repealed. The clause 'shall continue to be paid same salary and allowances as

was payable on the date of repeal of the Act.' conveys the intention of the Legislature in no uncertain terms that officers and employees of the

Board would retain their status and entitlements and if the same were different, the difference would continue. Hence, the submission that now the

Committee or the State Government are discriminating between daily wage employees and the regular employees has no substance because such

difference continues and is recognized by the provisions in Section 6(i) of the Repeal Act 2006 itself.

6. So far as power of the Committee of Secretaries constituted in terms of Section 6(ii) is concerned, it extends to prepare a scheme of absorption as

well as of retirement, compulsory retirement or voluntary retirement and other service conditions of officers and employees of the Board and the

Committee. A scheme of absorption can, while following the rules of fairness and reasonableness can provide for non-absorption also of different

categories of employees provided it does not violate any of the provisions of the Repeal Act 2006 or is not arbitrary and/or discriminatory so as to

violate equity clause of the Constitution. No doubt, such scheme prepared by the group of Secretaries is only recommending in nature and the State

Government has the final power to approve the scheme or to modify/ amend it before it grants final approval. Once the scheme is approved by the

Government, it has the status of a statutory scheme framed under the Act itself. It has to be enforced within the time indicated in Section 6(iii) of the

Repeal Act 2006.

7. In our considered view, the Committee of Secretaries could have treated the case of the daily wagers like the petitioners differently from the case

of regular employees of the Board and the Committees, for the purpose of scheme of absorption. The power to frame a detailed scheme of absorption

with power for retirement in various forms, when seen in The light of precarious nature of a daily wager's rights to continue in employment, the

Committee of Secretaries cannot be faulted in treating the daily wage employees on a different footing and deciding for their removal from service.

Such recommendation of the Committee, in our view, is not beyond the scope of power given to the Committee of Secretaries and in any case the

recommendation was only for consideration of the State Government and the final decision of the State Government, which has full power in such

matters, cannot be faulted on the ground of lack of power either under the Repeal Act 2006 or for alleged breach of Articles 14 and 16 of the

Constitution of India.

8. The second contention advanced on behalf of the petitioners was on the basis of several earlier judgments of this Court given by even Division

Benches that if the daily wagers have continued for long such as 7 years, 10 years or more, they should be treated to be regular employees. Such

view was on account of sympathy, compassion and equity on account of long years of service rendered on daily wages. But such compassionate view

in favour of daily wagers was considered in detail in the case of Secretary, State of Karnataka v. Uma Devi, reported in (2006) 4 SCC 1 : [2006 (2)

PLJR (SC) 363] and it was clearly held by the Constitution Bench that appointments made contrary to Articles 14 and 16 of the Constitution of India

de hors the rules of appointment, would be illegal appointments as

distinguishable from irregular appointments and they, like a still born child, can never

be infused with life. The Constitution Bench judgment in that case directed for one time consideration of cases of those employees who had continued

in employment for more than 10 years without the help of court orders, only if their appointments were irregular and not illegal. Earlier judgments

taking a contrary view were declared to have lost their value as precedents. Hence, it is no longer possible for this Court to follow the earlier

judgments or even later judgments taking a contrary view than what has been laid down in clear terms by the Constitution Bench in the case of Uma

Devi (supra). Had the service of these petitioners been regularized prior to the judgment in the case of Uma Devi, the matter would have been on a

different footing because in that judgment the Constitution Bench has clarified that past trans-actions will not be reopened on, account of that

judgment. However, it is not the case of the petitioners that their services were ever regularized in the past. Hence, we find ourselves unable to take a

lenient view or compassionate view on account of long length of service of the petitioners as daily wage employees, although it was strenuously

pleaded by highlighting that there is no dearth of posts for them and the appointing authority has retained them in service for long years.

9. One more legal aspect has persuaded us to hold in favour of the decision of the State Government. It is well settled in law that on account of

abolition of a department or posts under the Government, if the abolition is for valid reasons and not mala fide, the incumbents of such posts even

though in regular employment, lose the right to hold the post which has been abolished. Hence, if the Government on the recommendation of the

Committee of Secretaries has decided not to absorb the daily wage employees like the petitioners into a regular Government service, such decision

cannot be treated as illegal or mala fide. In the present facts, sympathy alone in favour of the petitioners would, in our opinion, be misplaced. It would

amount to curtailing the power of the State Government available to it under law only on account of sympathy. Had the Board or the Committees been

existing, we could have considered to continue the service of the petitioners, who entered as daily wagers till the completion of exercise for regular

recruitment could be completed but since the Board and the Committee are no longer in existence, in absence of the posts that option is also not

available. In view of aforesaid discussion and findings, we are left with no option but to dismiss the writ petitions. They are dismissed accordingly but without costs.