

---

**(2012) 08 PAT CK 0088**

**In the Patna High Court**

**Case No :** LPA No. 750 of 2011 in CWJC No. 17839 of 2010, IA No. 3359 of 2011  
in LPA No. 750 of 2011

The State of Bihar and Others

APPELLANT

Vs

Nand Kishore Prasad and Others

RESPONDENT

---

**Date of Decision :** 07-08-2012

**Acts Referred:**

Bihar Agricultural Produce Market (Repeal) Act, 2006 — Section 6  
Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 25FFF(1)

**Citation :** (2012) 4 PLJR 625

**Hon'ble Judges :** R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

**Bench :** Division Bench

**Advocate :** Ujjwal Kumar Sinha, for the Appellant; Jai Prakash Verma, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Hon"ble the Chief Justice R.M. Doshit

Re. Interlocutory/Application No. 3359 of 2011

1. The delay of 111 days occurred in filing the Letters Patent Appeal is condoned. Interlocutory application stands disposed of.

Re. Letters Patent Appeal No. 750 of 2011

2. This Appeal under Clause 10 of the Letters Patent is preferred by the State of Bihar and others against the judgment and order dated 16th November, 2010 passed by the learned single Judge in C.W.J.C. No. 17839 of 2010.

3. The respondent no. 1-the writ petitioner was engaged as a Typist on daily wage in the respondent-Bihar State Agricultural Marketing Board (hereinafter referred to as the "Board"). The Board was dissolved under the Bihar Agriculture Produce Markets (Repeal) Act, 2006 (hereinafter referred to as the "Act of

2006"). Pursuant to the dissolution of the Board the service of the writ petitioner was terminated on 25th June, 2010 giving him compensation as envisaged by Section 25FFF(1) of the Industrial Disputes Act, 1947.

4. Feeling aggrieved, the petitioner approached this Court under Article 226 of the Constitution in C.W.J.C. No. 17839 of 2010. By the judgment and order dated 16th November, 2010, the learned single Judge has allowed the writ petition. The learned single Judge has relied upon Section 6 of the Act of 2006. The learned single Judge has held that the Committee of Secretaries constituted u/s 6 of the Act of 2006 failed to consider the case of the writ petitioner. In absence of such consideration and decision by the Committee, the service of the writ petitioner could not have been terminated. The learned single Judge has sought support from the judgment of this Court dated 27th August, 2010 passed Most. Bibi Saukan and Others Vs. The State of Bihar and Others, and other analogous matters). Consequently, the learned single Judge has set aside the order dated 25th June, 2010 and has issued direction to the Committee of Secretaries to consider the case of the writ petitioner in accordance with Section 6 of the Act of 2006.

5. Feeling aggrieved, the State of Bihar has preferred this Appeal.

6. Learned Advocate Mr. Ujjwal Kumar Sinha has appeared for the appellant. He has submitted that Section 6 of the Act of 2006 refers to the officers and the employees of the Board. That necessarily means the officers and the employees of the Board in its regular set up, the daily wage employees are not included. The Committee of Secretaries, therefore, was not required to consider the cases of the daily wage employees.

7. He has further submitted that this issue has been decided by the Division Bench of this Court in the matter of Nand Kishore Prasad vs. The State of Bihar [2010(1) PLJR 763]. The Bench upheld the decision of the State Government to terminate the services of the daily wage employees who had not served for a long period. The claim of the daily wage employees for absorption in the Government service has been rejected by the Bench.

8. Learned Advocate Mr. Jai Prakash Verma has appeared for the respondent no. 1. He has contested the Appeal. Mr. Verma has submitted that the writ petitioner was not a daily wage employee. Although he was initially engaged on daily wages, later on he was paid the salary/wages equivalent to minimum in the pay scale and the dearness allowance. The writ petitioner, therefore, cannot be said to be the daily wage employee.

9. He has next submitted that Section 6 of the Act of 2006 enjoined the State Government to constitute a Committee of three Secretaries to consider the cases of the officers and the employees of the Board for absorption in the Government service. He has submitted that the word "employee" should embrace in its folds the daily wage employees also. The daily wage employees, therefore, had right to absorption in the Government service.

Order dt. 7.8.2012

10. The Board was established under the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the "Act of 1960"). Section 33E of the Act of 1960 empowered the Board to make appointment of such officers and servants it considered necessary for efficient performance on such terms and conditions as may be provided for in regulations made by the Board.

11. Thus, it was the prerogative of the Board to make regulations governing the service conditions of its officers and servants and it was the Board that was empowered to make appointment of its officers and servants. The term "officers and servants" would necessarily mean the officers and servants appointed in a regular cadre or on a sanctioned post in accordance with the regulations.

12. So far as the writ petitioner is concerned, it cannot be said that he was appointed in a regular cadre or on duly sanctioned post or that he was appointed by the Board. The order of appointment dated 29th June, 1987 was made by the Regional Director and was specifically made on daily wages and specifically provided for payment of Rs. 20/- per day. Moreover, in the writ petition C.W.J.C. No. 3998 of 2006 filed by the writ petitioner, decided by this Court on 6th August 2008, the writ petitioner claimed to be a daily wage employee and claimed equal treatment and parity of pay.

13. This Court in its order dated 6th August 2008 (Coram: Ajay Kumar Tripathi, J) categorically observed "it is not disputed that the petitioner was a daily wager and had been engaged by the respondents in that capacity and he was working for quite a while". It is not demonstrated before us that since the aforesaid order dated 6th August, 2008 the petitioner had been absorbed in the regular employment of the Board. In any view of the matter, it was not possible.

14. Under the provisions contained in the Act of 2006, effective from 1st September, 2006, the Board and the Market Committees have been dissolved. After 1st September, 2006 there was no scope for the petitioner to be absorbed in regular employment of the Board. The payment of wages at par with regular employees also will not change the nature of employment. The submission that the writ petitioner was a regular employee of the Board requires to be rejected.

15. Under the Act of 2006, the State of Bihar repealed the Bihar Agricultural Produce Markets Act, 1960 and the Bihar Agricultural Produce Markets Rules, 1975. The Board and the Market Committees were dissolved. In respect of the officers and employees of the Board, Section 6 of the Act of 2006 provided as under:--

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 officers 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.

16. It is apparent that the State Government did not consider it expedient to terminate the service of the officers and employees of the Board unceremoniously and decided to continue their service till a decision was taken in respect of their services. For that purpose sub-section (ii) provided for constitution of a Committee of three Secretaries which shall prepare a detailed scheme. Nevertheless, the said sub-section (ii) did not require that such Committee shall examine cases of individual officer and employee of the Board; nor did it provide for absorption of all the officers and employees of the Board in Government service. The Committee was empowered to suggest even retirement or discharge of such officers and servants as it may think expedient. Proviso to the said sub-section (ii) empowered the State Government to modify, amend such scheme or suggest modification or amendment to such scheme.

17. In discharge of the said obligation the State Government did constitute a

Committee of three Secretaries. The said Committee did make a detailed report. Pursuant to the said report the State Government passed Resolution dated 15th March, 2007 (Annexure-7 to the writ petition). The said Resolution made various provisions for different categories of officers and employees of the Board and the Market Committees depending upon the length of their service in the Board or the length of the remaining service. In respect of the daily wage employees, the said Resolution provided for immediate discharge from service on payment of compensation equal to one month's salary.

18. In the above circumstances, we hold that the State Government had, by constitution of Committee of three Secretaries and by passing the abovereferred Resolution dated 15th March, 2007 pursuant to the recommendation made by the said Committee, discharged its obligation u/s 6 of the Act of 2006.

19. The grievance of the writ petitioner that his case was not considered by the Committee is misconceived and is untenable. The petitioner has raised the dispute under a misconception of law that the said Committee was required to examine the cases of officers and employees individually.

20. Thus irrespective of the fact whether the petitioner, a daily wage employee, can be said to be an officer or a servant of the Board, his and such other cases had also been considered by the Committee of the Secretaries and appropriate provision has been made in respect of daily wage employees. Although the said Resolution provides for payment of compensation equivalent to one month's wages, the petitioner has been paid compensation in accordance with the Section 25FFF(1) of the Industrial Disputes Act, 1947. In absence of challenge to the aforesaid Resolution dated 15th March, 2007, the challenge to the action of the State Government in discharging the writ petitioner from service is not sustainable.

21. For the aforesaid reason we allow this Appeal. The impugned judgment and order dated 16th November, 2010 passed by the learned single Judge in C.W.J.C. No. 17839 of 2010 is set aside. C.W.J.C. No. 17839 of 2010 is dismissed. The parties will bear their own cost.