

(2010) 08 PAT CK 0115

In the Patna High Court

Case No : CWJC No"s. 2961 of 2007 and 12641, 12670, 12773, 13002, 13512, 13572, 13827, 13944, 13956, 13999, 14022, 14150 of 2010

Yogendra Mallik and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Bihar Agricultural Produce Market (Repeal) Act, 2006 — Section 6
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 1 PLJR 389

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the Petitioners, the State and the counsel for the Bihar State Agriculture Marketing Board (Dissolved) (hereinafter referred to as the Board).

2. Petitioners in all the writ application(s) were engaged from time to time to serve the Board/Market Committee/Bazar Samiti constituted under the Bihar Agriculture Produce Market Act, 1960. They continued in the employment of the Board/Market Committee/Bazar Samiti on the date of repeal of the Bihar Agriculture Produce Market Act, 1960 under the provisions of the Bihar Agriculture Produce Market (Repeal) Act, 2006 (hereinafter referred to as the Repealing Act). After enactment of the Repealing Act the services of the Petitioners have been terminated by the Board/Market Committee/Bazar Samiti either on its own or in compliance of the general direction of the Administrator of the Board issued under letter dated 12.2.2007, Annexure-6 in C.W.J.C. No. 12670 of 2010.

3. Petitioners have questioned the termination order dated 13, 16.10.2006, 12, 20, 26.2.2007, 14, 20.3.2007, 4.4.2007 by filing the present batch of writ applications. The ground of challenge raised in support of the petition(s) is that

the termination order is violative of Section 6 of the Repealing Act, which provides for absorption of officers and employees of the Board/Market Committee/Bazar Samiti serving the Board on the date of enactment of the Repealing Act. It is submitted with reference to Sub-section (ii) of Section 6 of the Repealing Act that the State Government is obliged to constitute a committee consisting of three secretaries, who shall prepare detailed scheme of absorption and other service conditions of officers and employees of the Board/Market Committee/Bazar Samiti serving the Board/ Market Committee/Bazar Samiti on the date of enactment of the Repealing Act and without there being any consideration of the case of the Petitioners for absorption by the committee of three secretaries in terms of Sub-section (ii) of Section 6 of the Repealing Act, the Administrator of the Board, the Market Secretary of the Market Committee/Bazar Samiti issued orders for termination of the services of the Petitioners which is in teeth of the provisions contained in Sub-section (ii), (iv) of Section 6 of the Repealing Act.

4. It is submitted that until the case of the Petitioners and other daily wage employees of the Board/Market Committee/Bazar Samiti serving the Board/Market Committee/Bazar Samiti on the date of repeal of the Act is considered by the State Government in the light of the recommendation of the committee of the secretaries of the State Government the Administrator ought not to have issued general direction dated 12.2.2007 for termination of the services of the Petitioners and other daily wagers.

5. Counsel for the Board and the State have opposed the prayer with reference to the averments made in the counter affidavit filed on behalf of Respondent Nos. 6 and 7 and the Annexures appended thereto. It is submitted by them that after enactment of the Repealing Act, the Administrator of the Board directed all the Assistant Directors of the Marketing Board (Dissolved), Executive Engineer of the Works Division (Dissolved) and the Sub-Divisional Officer-cum-Special Officer of the Market Committee (Dissolved) to terminate the engagement of the daily wagers under letter bearing No. 295 dated 12.2.2007, Annexure-A to the counter affidavit and in the light of the direction contained in Annexure-A, the concerned authorities have passed termination order of these Petitioners from time to time, which has been impugned in this batch of writ petitions. Learned Counsel for the Board also referred to the resolution of the Agriculture Department of the State Government dated 15.3.2007, Annexure-B to submit that the State Government has taken a decision to remove the engagement of all the daily wagers of the Board after paying them wages for one month and such decision is contained in paragraph-3.6 of resolution dated 15.3.2007, Annexure-B. Learned Counsel also relied on the judgment of the Single Judge of this Court dated 6.2.2008 passed in C.W.J.C. No. 1120 of 2007 in the case of Surendra Kumar Singh and Others and order dated 30.4.2007 passed in C.W.J.C. No. 14601 of 2006 in the case of Navin Kumar, whereunder similar termination order has been upheld. It is also submitted that orders of this Court dated 30.4.2007 passed in the case of Navin Kumar has further been affirmed by the Division Bench of this Court under

orders dated 24.9.2008 passed in L.P.A. No. 482 of 2008, Annexure-D. Learned Counsel finally relied on the judgment of the Division Bench dated 9.12.2009 in the case of Nand Kumar bearing C.W.J.C. No. 16109 of 2008* and other analogous matters. While relying on the orders dated 9.12.2009 passed in the case of Nand Kumar and others, Sri B.K. Singh Chouhan, learned Counsel for the Board submitted that Division Bench having considered the import of Section 6 of the Repealing Act observed as follows:-

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.

6. In view of the authoritative pronouncement of this Court in the case of Nand Kumar (supra) Sri Chouhan submitted that this Court has no option but to dismiss the writ petitions as termination of the daily wagers pursuant to the general direction of the Administrator is in the light of the instructions of the committee of three secretaries formed in the light of the provisions contained in Sub-section (ii) of Section 6 of the Repealing Act.

7. Having perused the provisions of the Repealing Act, the pleadings made in the writ petitions, the counter affidavit as also the different orders of the learned Single Judge and the Division Bench of this Court appended with the counter affidavit, I am of the view that committee of three secretaries constituted by the State Government in the light of the provisions contained in Sub-section (ii) of Section 6 of the Repealing Act is to consider the case of all the employees including daily wagers serving the Board/Market Committee/Bazar Samiti on the date of enactment of the Repealing Act i.e. 1.9.2006 for absorption and the scheme of absorption prepared by the committee of three secretaries is to be considered by the State Government in the light of proviso to Sub-section (ii) of Section 6 of the Repealing Act. Until modification, approval of the scheme of absorption prepared by the three secretaries by the State Government, the officers and employees of the Board/Market Committee/Bazar Samiti serving the Board/Market Committee/Bazar Samiti on the date of enactment of the Repealing Act i.e. 1.9.2006 shall continue to serve the Board/Market Committee/Bazar Samiti. Such is the mandate of Sub-section (i) of Section 6 of the Repealing Act.

Term employee used in Section 6 of the Repealing Act having not been" defined to exclude the daily wagers from the purview of Section 6 of the Repealing Act, the case of the Petitioners and other daily wagers was required to be considered for absorption by the committee of three secretaries and the State Government. From the resolution of the State Government dated 15.3.2007, Annexure-B to the counter affidavit, it does not appear that committee of three secretaries have considered the case of daily wagers serving the Board/Market Committee/Bazar Samiti on 1.9.2006. Such fact is not even appearing from the order of the Administrator dated 12.2.2007 that the committee of three secretaries and the State Government ever considered the case of daily wage employees serving the Board/Market Committee/Bazar Samiti on the date of repeal of the Act i.e. 1.9.2006. As the committee of three secretaries and the State Government has not considered the absorption of the daily wagers serving the Board/Market Committee/Bazar Samiti on the date of repeal of the Act their termination in the light of the general direction of the Administrator contained in order dated 12.2.2007 or suo motu by the Committee/ Samiti, in my opinion is contrary to the provisions contained in Sub-section (i), (ii) of Section 6 of the Repealing Act.

8. Having held as above, I have no option but to set aside the termination order dated 13, 16.10.2006, 12, 20, 26.2.2007, 14, 20.3.2007, 4.4.2007 passed in the case of these Petitioners. Having set aside the termination order of the Petitioners, I, however observe that the committee of secretaries constituted by the State Government should consider the case of the Petitioners and other daily wagers serving the Board/Market Committee/Bazar Samiti on 1.9.2006 for absorption in terms of Section 6 of the Repealing Act.

9. With the observation and direction aforesaid, the writ application(s) are allowed.