

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4636 of 2007

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Horil Mandal, Son of Late Changuri Mandal, resident of Mohalla-Kahalgaon (Chaudhary Tola Ward No.10) Post and Police Station-Kahalgaon, District- Bhagalpur, at present working class-IVth (Padchar) post in Agriculture Produce Market Committee, Kahalgaon, Post and Police Station- Kahalgaon, District- Bhagalpur. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
 2. The Bihar State Agriculture Produce Market Board through its Managing Director, Pant Bhawan, Bailey Road, Patna.
 3. The Secretary, Bihar State Agriculture Produce Market Board through its Managing Director, Pant Bhawan, Bailey Road, Patna.
 4. The Regional Director, Agriculture Produce Market Board Range Bhagalpur, Post + P.S.- Bhagalpur, District- Bhagalpur.
 5. The Chairman, Agriculture Produce Market Committee, Kahalgaon, Post and Police Station- Kahalgaon, District- Bhagalpur.
 6. The Special Officer, Agriculture Produce Market Committee, Kahalgaon, Post and Police Station- Kahalgaon, District- Bhagalpur
- Respondents

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Appearance :

For the Petitioner/s : Mr. Ashutosh Jha, Advocate
Mr. Bijoy Kant Mishra, Advocate
Mr. Avinav Kumar, Advocate

For the Respondent/s : Mr. Ram Shankar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

8 15-12-2015 Heard learned counsel for the petitioner and respondents.

2. The petitioner seeks quashing of the order dated 12.02.2007 of the Secretary, Bihar State Agriculture Produce Market Board as well as consequential order dated 21.02.2007, passed by the Special Officer, Agriculture Market Committee.

3. By the order, dated 12.02.2007, the Secretaries, Bihar State Agriculture Produce Market Board (hereinafter referred to as the 'Board') issued direction to various officials of



the Board as well as to the Special Officers, Bihar Agriculture Produce Market Committee (hereinafter referred to as 'the Market Committee') not to take work from daily wages worker. Consequent to the order dated 12.02.2007, the Special Officer, Market Committee, Kahalgaon relieved the petitioner and two others from performing any work, as they were in the category of daily wage workers. Both the letter dated 12.02.2007 issued by the Bihar State Market Produce Board and consequential letter dated 21.02.2007 issued by the Special Officers, Bihar Agriculture Produce Market Committee are impugned in this writ application.

4. The case of the petitioner is that respondent no.6, the Special Officer, Bihar Agriculture Produce Market Committee erred in relieving him from work, treating him a daily wage worker. He contends that he is a regular employee and thus ought to have been absorbed in Government service in view of Government Resolution No. 1108 dated 15.03.2007 contained in Annexure-B to the Counter affidavit as well as Section 6 (1) of the Bihar Agriculture Produce Market (Repeal) Act, 2006 (hereinafter referred to Repeal Act, 2006), which came into effect from 1st September, 2006.

5. Before one, consider the grounds of challenge, it would be relevant to notice the facts of the case in brief:

The Agriculture Produce Market Committee,



Kahalgaon created a new post of Class-IV category vide Sanklap no. 8 dated 18.01.1985. The petitioner was engaged on 14.03.1985 on the post of Peon in Branch Office, Pirpainti under Agriculture Produce Market Committee, Kahalgaon on daily wage basis. He would not be on duty on Sunday and on other holidays. A copy of Sanklap, dated 18.01.1985 and office order, dated 12.03.1985, are annexed as Annexure-1 Series to the writ application. On 31.03.1985, the petitioner was paid remuneration for 15 days. On 19.10.1985, the respondent no.6 ordered to take work from the petitioner, even on holidays. On 02.07.1988, the respondent no.6 directed that petitioner would continue to serve on daily wage basis, till further orders. The petitioner also filed an application for regularization of his services before Member Secretary, which was placed before the Committee. The Committee found the petitioner fit in all respect for being regularized. The Member Secretary was asked to take all appropriate steps in the direction. A copy of the Resolution of the Market Committee, dated 30.04.1990, signed by the Chairman and Secretary of the Market Committee is annexed as Annexure-5 to the writ application.

6. The Market Committee vide its Resolution no. 12, dated 30.06.1990 regularized the service of the petitioner in regular pay scale in anticipation of approval of the Board. (Pursuant to the Resolution, the Secretary issued Office order

regularizing the service of the petitioner vide Memo no. 337 (A) dated 30.06.1990 (Annexure-6 Series). The petitioner accordingly submitted his joining on 01.07.1990 and the service book of the petitioner was opened.

7. However, the Special Officer, Market Committee (respondent no.6) issued office order dated 11.10.1990 not to grant regular salary to the petitioner till his approval from the Board. In view of the letter dated 11.10.1990, the regular salary of the petitioner was stopped. However, on the representation of the petitioner, the Regional Director, Agriculture Produce Market Committee, Bhagalpur vide his order, dated 16.10.1990 stayed the order of respondent no.6 dated 11.10.1990. The petitioner as such continued to discharge his service on regular salary.

8. In the year, 2006, the State Legislature enacted Bihar Agriculture Produce Market (Repeal) Act, 2006, as a result of which, Bihar Agriculture Market Act 1960 and Rules framed thereunder in the year 1972 stood repealed, save and except certain decisions, rendered earlier as well as disciplinary proceedings initiated or pending against its employees were saved. Section 6 (1) and (ii) of the Repeal Act, 2006, which is relevant in the context is quoted herein below:

“Section 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;”

9. The assets and liability of the Board and the Bazar Samiti vested in the Government. On 12.02.2007, the Secretary, Bihar Agriculture Produce Market Board issued directions to the officials of the Board as well as Bazar Samiti not to take work from daily wage workers. Consequent to the direction dated 12.02.2007, Special Officer, Bihar Agriculture Produce Bazar Samiti, Kahalgaon relieved the petitioner from work on the ground that he is a daily wage worker.



10. Learned counsel for the petitioner submits that he was a regular employee, as such he should not have been relieved from his work in view of Section 6 (i) and Resolution dated 15.03.2007, as contained in Annexure-A to the counter affidavit. He next submits that in any view of the matter, he has served in the Bazar Samiti for 23 years and as such at the fag end of his service, it would be too unreasonable and harsh to throw him out from the job.

11. On the other hand, counsel for the respondents submits that the petitioner's regular appointment by the Samiti was subject to approval of the Board. Admittedly, the Board had not approved the appointment of the petitioner and as such he could not be termed as regular employee.

12. I have heard the counsel for the parties. As per Section 6(i) Act all the Officers and the Employees of the Board would remain in employment, as if the Act has not been repealed and would be paid same salary and allowances.

13. Sub-Section (ii) of Section 6 states that the State Government would constitute a Committee of three Secretaries, who will prepare detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement and other service conditions of officers and employees of the Board and Committee. The scheme prepared by the three Secretaries was subject to the

approval by the Government.

14. In the light of Section 6 (ii), a Committee of three Secretaries were constituted, which chalked out modalities and schemes for absorption of officers and employees of the Board and the Committee. The Committee of the Secretaries laid down elaborate schemes for absorptions in its resolution dated 15.03.2007. The salient features of the scheme are incorporated in Clause 3.1 to 3.7 of the Resolution. As per Scheme, any employee, who was appointed illegally or irregularly would be discharged from his service without any compensation. The persons, who appointed against unsanctioned post or without following the procedure, would fall within the category of illegal and irregular appointment.

15. The contention of the respondents is that the petitioner cannot be said to be a regular employee, as his appointment was not approved by the Board.

16. In my view, the submissions made by the respondents is only to be noted to be rejected. The Market Board in its letter no. 8064 dated 05.11.1980, addressed to respondent no.6 clarified that the Samiti is competent to make appointment to Class-IV post, for which no prior approval of the Board is necessary. A copy of the letter dated 05.11.1980 is annexed as Annexure-10. Section 20 (4) of Bihar Agriculture Produce Market



Act empowers Market Committee to make appointment of officers and servants. Rule 64, Clauses 11 (C) and (d) of Bihar Agriculture Produce Market Rules read together permit the Market Committee to make appointment of non-supervisor staff without prior approval. The Resolution of the Board dated 30.04.1990 and the office order no. 337 (A) dated 30.06.1990 regularizing the service of the petitioner did not require any approval of the Board and any such stipulation with respect to the said requirement would be superfluous and no strings can be attached to it to the disadvantage of the employee. The reliance of the respondent at the judgment delivered in case of Nand Kumar Vs. State of Bihar & Ors (Annexure-B to the counter affidavit) also of Agriculture Produce Market Board/Committee would not be of any aid, as in the aforesaid the daily wagers were not regularized.

17. In view of the Scheme framed by the three men committee approved vide Government Resolution dated 15.03.2007, the issue which comes for consideration is whether the appointment of the petitioner was valid and legal. In case, the appointment was invalid, the respondent would be right in not absorbing him in regular service. I find that the petitioner was appointed against a sanctioned post by the competent authority on daily wage basis. His services was regularized vide resolution of the Bazar Samiti, Kahalgaon. It is true that no advertisement was

issued for the said post in the year 1985 when petitioner was engaged on daily wage basis. May be the advertisement was not issued, as the appointment was being made against a solitary post. His services was regularized in the year 1990 vide Resolution and office order dated 30.06.1990 of Bazar Samiti. However, after 17 years of the regularization, the respondent no.6 held him to be a daily wage employee. It is not the case of respondent that the regularization was bad or the Bazar Samittee lacked necessary jurisdiction to make appointment on class IV post.

18. The impugned order thus would not be sustainable in view of the Resolution and office order of the Bazar Samiti, dated 30.06.1990 as well as letter of the Board dated 05.11.1980 (Annexure-10), as per which Bazar Samittee is competent to make appointment on Class IV post. The impugned order is, accordingly, set aside and the matter is remitted to respondent no.3, Principal Secretary/Secretary of Agriculture Department for fresh consideration of petitioner's case.

19. In the light of the observations made above, this application is allowed.

(Samarendra Pratap Singh, J.)

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