IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11952 of 1998

==

1. Bihar Rajya Krishi Vipnan Parishad, Bazar Praveshika Sangh, through its Secretary Ram Binod Singh (petitioner no.2).
2. Ram Binod Singh, son of Late Bhekhdhari Singh, resident of Village-Supaul, PS- Tajpur, District- Samastipur, at present Market Supervisor, APMC, Garhzoa.
3. Ram Babu Singh, son of Sri Gorakh Singh, at present posted as Marketing Secretary, Pupri, Sitamarhi and President Bihar Rajya Krishi Viparan Parishad, Bazar Parvekhak Sangh.

.... Petitioner/s

Versus

1. Bihar State Agricultural Marketing Board, through its Managing Director.
2. The Managing Director, Bihar State Agriculture Marketing Board, Pant Bhawan, Jawaharlal Nehru Marg, Patna.
3. D.K. Choudhary, son of not known, Legal Assistant, Bihar State Agricultural Marketing Board, Patna.
4. The Administrator, Marketing Board, Patna.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Adv.

For the Respondent/s : Mr. Subodh Kumar, AC to SC-26

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-04-2018

Heard Mr. Jay Prakash Verma, learned counsel appearing for the petitioners and Mr. Subodh Kumar, learned Assisting Counsel to Standing Counsel No.26 for the State.

The writ petition was admitted for hearing vide order passed on 21.9.1999.

While the petitioner no.1 is an association of Market Supervisors, the petitioner nos.2 and 3 are its members and they have moved this Court for commanding the respondent authorities of the Bihar State Agriculture Marketing Board (hereinafter referred to as 'the Board') since repealed through Bihar Agriculture Produce (Market) Repeal Act, 2006 (hereinafter referred to as the 'Repeal

Act') with its assets and liabilities vesting in the State, to make payment of salary of the petitioners herein as well as the other members Market Supervisor of petitioner no.1 on the basis of the scale fixed by the Board of Directors in its meeting held on 19.10.1993, whereby approval was granted by the Board for allocation of scale of Rs.1500-2750/- for the Market Supervisor. The resolution of the Board dated 19.10.1993 circulated vide order bearing Memo No.528 dated 31.1.1994 is at running page 128 with a formal order being issued by the Managing Director bearing Memo No.4325 dated 5.9.1994 at Annexure 11 to the supplementary affidavit.

The issue in hand cuts a very sorry state of affairs which has become a usual feature in the actions complained against the authorities of the State Government.

The facts leading to the present writ petition briefly stated is that some aggrieved Price Reporters approached this Court through CWJC No.8571 of 1996 praying therein to grant them the same pay-scale as given to the Market Supervisor. The writ petition was heard and allowed by a coordinate Bench of this Court vide judgment and order passed on 19.3.1998 with a direction to the authorities of 'the Board' to consider the claim of the Price Reporter for the same scale as given to the Market Supervisor after taking into consideration the relevant facts and circumstances.

Objections were raised by 'the Board' to the prayer made by the Price Reporters on two grounds, namely:

(a) The upgradation of pay-scale of Market Supervisor was provisional and subject to the confirmation by the Bureau of Public Enterprises; and

(b) The nature of functions and duties of the Price Reporter and Market Supervisor was different.

The learned Single Judge while rejecting the stand taken by 'the Board' that the upgradation of the scale of Market Supervisor was provisional and subject to the decision of the Bureau of Public Enterprises in reference to a Division Bench judgment passed in **CWJC No.2035 of 1989 (R) (Sanjeev Kumar Bimal & others vs. Bihar State Agriculture Produce Marketing Board & others)** held that there is no provision under the Act regulating the function of 'the Board' which empowers the State Government to interfere with the regular functioning of 'the Board' including appointment, pay-scale etc. It was held that the decision on a pay-scale is to be taken by 'the Board' and no prior approval of the State Government is necessary in this regard. It was also held that 'the Board' is competent to take final decision with regard to fixation and revision of the pay-scale and the Bureau of Public Enterprises which is a wing of the State Government has no say in the matter.

The Court thus while rejecting the first objection of 'the Board', directed them to consider the claim raised by the Price Reporters for the same scale as given to the Market Supervisor.

Before going further in the matter, I deem it necessary to refer to two orders which have strong bearing on the issue raised and contested. The first is the resolution of the Board of Directors taken in its meeting held on 19.10.1993 and the relevant part of which runs under:

> “दिनांक 19–10–1993 को निदेशक: 509 मंडल की सम्पन्न बैठक की कार्यवाही।
>
> ————————
>
> <u>अनुपूरक कार्यावली संख्या 23:</u>
>
> <u>बाजार पर्यवेक्षकों के वेतनमान उत्क्रमण के संबंध में।</u>
>
> पूर्ण विचारोपरान्त बाजार पर्यवेक्षकों का वेतनमान 1500–2750 रु0 की स्वीकृति दी गई।
>
> अगर अन्य संवर्गों के वेतनमान में विसंगतियाँ हो तो इसे दूर करने हेतु एक उप समिति गठित करने हेतु प्रबन्ध निदेशक को प्रधिकृत किया गया।”

The resolution of the Board was circulated vide Memo No.528 dated 31.1.1994 and a formal order to this effect was issued by the Managing Director bearing Memo No.4325 dated 5.9.1994, a copy of which is at Annexure 11. While there is no stipulation in the Board’s resolution regarding seeking approval of the Bureau of Public Enterprises to the scale so allocated to the Market Supervisor, the Managing Director has unnecessarily incorporated the stipulation that the scale granted to the Market Supervisors, was in anticipation of approval of the Bureau of Public Enterprises. It is this part of the order which was being pressed upon by ‘the Board’ in the round of proceeding initiated by the Price Reporters and was rejected. In other words the pay-scale given to the Market

Supervisor by 'the Board' of Rs.1500-2750/- was final and not conditional nor any approval by the Bureau of Public Enterprises was required as held by this Court.

Reverting back to the action taken by 'the Board' on the prayer of the Price Reporters seeking parity in scale in the light of the orders of this Court in the case of **Birendra Kumar Singh** (supra), the Managing Director, instead of examining the claim of the Price Reporters for parity with the scale given to the Market Supervisor, chose to downgrade the scale allocated to the Market Supervisor vide her resolution bearing Memo No.4910 dated 25.10.1997 in purported compliance of the order passed by this Court in the case of **Birendra Kumar Singh** (supra). The Managing Director apparently, misinterpreted the judgment and order of this Court for there is no such direction to the Managing Director to consider the scale given to the Market Supervisor rather the direction was to consider the entitlement of the Price Reporter to the scale allocated for the Market Supervisor.

A clear case of overreach by the Managing Director does surface because it is not the Market Supervisors who were before this Court for any scale rather it were the Price Reporters who were claiming the scale allocated to the Market Supervisor and thus the Managing Director had no business to interfere with the scale given to the Market Supervisor by the Board of Directors. The order of the Managing Director bearing Memo No.4910 dated 25.10.1997 is not only a case of overreach as well as of distorted compliance of the judgment and order of this Court rather is a case of insubordination in trying to nullify a valid resolution of 'the Board' which jurisdiction is not vested in the Managing Director. The illegal order of the Managing Director dated 25.10.1997 has culminated in a formal order passed on 24.10.1998 and circulated vide Memo No.954 dated 31.10.1998 whereby the scale of the Market Supervisor has been reduced to Rs.1320-2040/-. This order again is not an order of the 'Board' rather is of the Managing Director in individual capacity.

While Mr. Verma, learned counsel appearing for the petitioners has chosen to question the two orders at Annexure 12 and Annexure 'C' respectively as being wholly without jurisdiction for the Managing Director is not vested with any power to review a resolution of 'the Board', an attempt is made by Mr. Subodh Kumar, learned Assisting Counsel to Standing Counsel no.26 to justify the action taken, hiding behind the mandamus issued by this Court in the case of **Birendra Kumar Singh** (supra).

In my opinion, the justification by the learned State Counsel to the exercise by the Managing Director is only taken for rejection because as I have observed above, it is not the Market Supervisors who had come before this Court for allocation of scale rather it is the Price Reporters who had approached this Court for parity and thus the mandamus issued by this Court obliged 'the Board' only to examine whether or not the Price Reporters were entitled to the scale given to the Market Supervisor and nothing beyond.

It is preposterous that in purported compliance of the direction of this Court, the Managing Director instead of examining the claim of the Price Reporters for parity has exceeded her jurisdiction to interfere with the scale granted to these Market Supervisors under a valid resolution of ‘the Board’, which liberty was neither present in the order of this Court nor was the Managing Director empowered to examine the same.

The petitioners herein as well as the other members of the petitioner no.1-Association have suffered under the arbitrariness of the Managing Director as present in the order dated 25.10.1997 followed by the order bearing Memo no.954 dated 31.10.1998 at Annexure 12 to the supplementary affidavit and Annexure ‘C’ to the counter affidavit which orders as observed are wholly without jurisdiction because in an exercise of purported compliance of the order of this Court, the Managing Director has sat in appeal over the resolution of ‘the Board’ which power is not vested in her either under the Bihar Agriculture Produce Market Act, 1960 or the ‘Rules’ or the Byelaws framed thereunder.

While this matter is pending hearing that an issue has cropped up by virtue of the enforcement of the ‘Repeal Act’ because ‘the Board’ stands superseded with the State Government stepping into its shoes to own the assets as well as liabilities as manifest from section 4 of the 'Repeal Act'. Section 4(1) of the 'Repeal Act' while vesting the assets of the 'Board', both moveable and immoveable, in the State Government, also passes the liability, statutory and non-statutory, secured or unsecured, on the State Government.

In view of the clear stipulation present in section 4(1) of the 'Repeal Act', the plea taken by the Under Secretary cum Administrator to avoid the obligation hiding behind the 'Repeal Act', in my opinion, is futile because the respondent-State through its Administrator cannot shirk from their responsibility to own the liability arising.

For the reasons so discussed, the order of the Managing Director of 'the Board' bearing Memo No.4910 dated 25.10.1997 at Annexure 12 together with the order of the Managing Director bearing Memo No.954 dated 31.10.1998 at Annexure 'C' in so far as it proceeds to interfere with the scale allotted for the Market Supervisor under the resolution of 'the Board' dated 19.10.1993 at running page 128 of the writ proceedings culminating in the order bearing Memo No.4325 dated 5.9.1994 at Annexure 11, are held illegal and accordingly quashed and set aside.

The Market Supervisors including the petitioners herein are held entitled to the pay-scale as given to them by 'the Board' through its resolution dated 19.10.1993 circulated vide Memo no.528 dated 31.1.1994 and the order bearing Memo no.4325 dated

5.9.1994 and shall be entitled to the same until their respective absorption in the State Government on the terms and conditions so fixed under the ‘Repeal Act’. The petitioners are held entitled to consequential benefits arising therefrom including the arrears of salary admissible to them as well as the fixation of post-retirement benefits as found admissible which exercise to be completed within a period of 3 months from the date of receipt/production of a copy of this judgment.

The writ petition is allowed with no order as to costs.

The interlocutory applications are accordingly disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19-05-2018
Transmission Date	NA