

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2430 of 2011

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1. Kapil Deo Mahto, son of Late Baiju Mahto, R/o Vill. Lohia Nagar, Ward No. 15, P.S. & Distt. Begusarai,
 2. Bishambhar Prasad Singh, son of Late Hari Singh, R/o Vill. & Post Maranchi, P.S. Maranchi, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna,
2. The Principal Secretary, Personnel and Administrative Reforms Department, Old Secretariat, Bihar, Patna,
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Old Secretariat, Bihar, Patna,
4. The Agriculture Production Commissioner, Department of Agriculture, New Secretariat, Bihar, Patna,
5. The Joint Secretary, Department of Agriculture, New Secretariat, Bihar, Patna,
6. The Administrator, Bihar State Agriculture Marketing Board (Abolished), Pant Bhawan, Bailey Road, Patna,
7. The Secretary, Bihar State Agriculture Marketing Board (Abolished), Pant Bhawan, Bailey Road, Patna,
8. The Sub-Divisional Officer, Bakhari Cum Special Officer, Agriculture Produce Market Committee (Dissolved), Bakhari, Distt. Begusarai,
9. The Sub-Divisional Officer, Badh Cum Special officer, Agriculture Produce Market Committee (Dissolved), Mokama, Distt. Patna.

.... Respondent/s

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Appearance:

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

For the Respondents-State: Ms. Nutan Sahay, AC to AAG 12.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 04-01-2018

Heard learned counsel for the petitioners.

2. The petitioners being aggrieved by the order as contained in letter no. 111 dated 23.02.2007 passed by the Sub Divisional Officer-cum-Special Officer, Agriculture Produce Market Committee (since dissolved), Bakhari in the district of Begusarai have



filed the present Writ Application for issuance of a writ of certiorari. By virtue of this letter, services of the petitioners were terminated in compliance of a general direction, contained in letter no. 295 dated 12.02.2007 issued under the signature of the Secretary of the Agriculture Produce Market Committee (since dissolved) (hereinafter referred to as 'the Board'), communicating to all concerned departments as per the direction of the Administrator of the Board.

3. The petitioners claimed that they were working as daily-wage-employees but with the coming into force of the Bihar Agriculture Produce Market (Repeal) Act, 2006 (Bihar Act 23, 2006) (hereinafter referred to as 'the Repeal Act'), the Board stood dissolved and a decision was taken to dispense with the engagement of the petitioners. The petitioners claimed benefit of absorption in terms of Section 6 of the Repeal Act.

4. At the time of filing of the Writ Application, the petitioners had been relying upon the judgment of this Court rendered in the case of **Munna Kumar Rajak Vs. The State of Bihar & Ors.** (CWJC No. 14599 of 2006) and other analogous matters as contained in Annexure-7 to the Writ Application as also on the judgment of another co-ordinate bench of this Court rendered in the case of **Yogendra Mallik & Ors. Vs. The State of Bihar & Ors.** (CWJC No. 12641 of 2010), a copy of which has been annexed as Annexure-9



to the Writ Application.

5. By the judgment rendered in the case of **Yogendra Mallik & Ors.** (Supra), a co-ordinate bench of this Court set aside the termination orders passed in the case of the petitioners of the said case and directed the State Govt. to constitute a committee of three Secretaries, who had to consider the case of the petitioners and other daily wagers serving the Board / Market Committee / Bazar Samiti on 01.09.2006 for absorption in terms of Section 6 of the Repeal Act.

6. The judgment dated 27.08.2010 passed in CWJC No. 12641 of 2010 (**Yogendra Mallik Vs. The State of Bihar & Ors.**) & its analogous cases came to be challenged by the State of Bihar in Letters Patent Appeal No. 1837 of 2010 and its analogous appeals which were heard together and were finally disposed of on 09.05.2016 by a Division Bench of this Court. The Letters Patent Appeals were allowed as the Hon'ble Division Bench was of the view that an earlier judgment of this Court in the case of **Nand Kumar Vs. The State of Bihar & Ors.**, reported in **2010 (1) PLJR 763**, had already held that the decision of the State not to consider the case of daily-wagers cannot be said to be wrong. It was also found that the judgment of this Court in the case of **Nand Kumar** (Surpa) had been approved by the Hon'ble Apex Court in the judgment reported in (2014) 5 SCC 300.

7. When this Writ Application was earlier taken up for



admission, a co-ordinate bench of this Court vide its order dated 07.02.2011 directed it to be listed along with CWJC No. 20404/2010. The said CWJC No. 20404/2010 was earlier directed to be listed after disposal of LPA No. 1911 & 1889 of 2010 which were preferred against the judgment dated 27.08.2010. I have already noticed the judgment of the Hon'ble Division Bench of this Court dated 09.05.2016 passed in LPA No. 1837 of 2010 and its analogous cases.

8. At this stage, when the matter is taken up learned counsel for the petitioners has placed before me a copy of the judgment dated 07.09.2017 passed by the Division Bench presided over by Hon'ble the Chief Justice in LPA No. 1329 of 2011 arising out of CWJC No. 12583 of 2010. A reading of the order would show that while hearing the Letters Patent Appeal the Hon'ble Division Bench was informed that the State Govt. had already constituted a committee as per the directions issued in paragraph 4 of the order dated 23.07.2010 passed in CWJC No. 2314/1998 and the said Three-Man Committee had considered the matter and by a general order passed, i.e., Memo No. 1743 dated 27.03.2012, cases of all similarly situated persons have been rejected and the committee upheld the termination orders of the daily-wage-employees. In that view of the matter, the Division Bench was of the view that since the committee had already taken a decision, the Letters Patent Appeal stood



infructuous as the order passed in the Writ Petition has been given effect to. The Court having taken note of the judgment of the earlier Division bench in the case of **Nand Kumar** (Supra) took a view that if the judgment of the Court in the case of **Nand Kumar** (Supra) was available to the State Govt. then its officers should not have complied with the direction when as per the direction issued in the Writ Petition the matter was referred to the committee and the committee passed the order as indicated to the Court which is in the nature of a general order applicable to all the employees concerned rejecting their claim, nothing remains for adjudication and the Court was not required to go into any further issue in the matter. Having said so, the Hon'ble Division Bench also observed that if the respondents have any grievance with regard to the decision taken by the government passed on the recommendations made by the committee they can challenge the decision contained in Memo dated 27.03.2012.

9. By placing the aforesaid judgment dated 07.09.2017 in LPA No. 1329 of 2011, learned counsel submits that similar liberty may also be granted to the petitioners to challenge the general decision contained in Memo dated 27.03.2012 which will be in consonance with the view expressed by the Hon'ble Division Bench in its judgment dated 07.09.2017.

10. Learned counsel for the State submits that the case of



the petitioners is fully covered by the earlier Division Bench judgment in LPA No. 1837 of 2010 and its analogous cases, disposed of on 09.05.2016. It is further submitted that so far as the judgment dated 07.09.2017 in LPA No. 1329 of 2011 is concerned, the Hon'ble Division Bench granted liberty to challenge the decision contained in Memo dated 27.03.2012 only to the respondent of the said appeal. It is further pointed out that the petitioners have not brought on record the order dated 27.03.2012 to show that the said order contains his name and consideration in his respect as well.

11. Having considered the rival submissions at the bar and upon perusal of the records, I am of the considered opinion that so far as the present Writ Application is concerned, nothing remains for adjudication in the Writ Application in view of the Division Bench judgment dated 09.05.2016 passed in LPA No. 1837 of 2010 and its analogous cases. The Division Bench judgment dated 07.09.2017 in LPA No. 1329 of 2011 definitely takes into consideration the fact that a general order dated 27.03.2012 was passed by a committee constituted by the State Govt. and it does give an impression that the said decision has been taken in respect of daily-wagers but the petitioners have not brought on record the Memo dated 27.03.2012 in this case and, as such, this Court is unable to examine the contention of the petitioners that their case is covered under Memo dated



27.03.2012. The Court is, however, of the opinion that since the petitioners have been continuously contesting the issues arising out of their termination and the Writ Application remained pending till date before this Court, if they are found covered under the general order passed by the committee vide Memo dated 27.03.2012, they will definitely have liberty to challenge the said decision by way of an appropriate application before a competent court of law.

12. The Writ Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.01.2018
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