

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22283 of 2011

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1. Md.Yahya, Son Of Late Md. Umar, Resident of Village and P.S. Mohiuddin Nagar, District- Samastipur
 2. Kamal Rajak, Son of Late Bigu Rajak, R/O Village - Hasanpur Surat, P.S. Patori, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Personnel And Administrative Reforms Department, Old Secretariat, Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government 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 Sub-Divisional Officer - Cum- Special Officer, Agriculture Produce Market Committee (abolished), Patori, District-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Jai Prakash Verma, Advocate
For the State	:	Mr. Sita Ram Yadav, G.P.-16

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 11-03-2019

Heard learned counsel for the petitioners and learned counsel for the State.

In the present case, the petitioners have initially challenged the letter contained in Memo No.1060 dated 27.06.2007, which was issued under the signature of Sub-Divisional Officer-cum-Special Officer, Agriculture Produce



Marketing Committee (abolished) whereby and whereunder the petitioners have been terminated with retrospective effect i.e. 22.02.2007 from their services in compliance of a general direction contained in letter no.295 dated 12.02.2007 and further made a prayer for quashing the order of three groups of Secretaries dated 26.08.2011, which has been passed in compliance of the order of this Court passed in CWJC No.12583 of 2010 whereby and whereunder the group of Secretaries has rejected the claim of the petitioners for their absorption in services in view of the Division Bench decision rendered in **2010 (1) PLJR 763 (Nand Kumar and Ors. Vs. State of Bihar and Ors)** and further prayer has been made for giving direction for reinstating the petitioners in service from the date of termination as has been claimed by the petitioners that in terms of Section 6 of the Bihar Agriculture Produce Market (Repeal) Act, 2006, which specifically provides for the absorption of officers and employees of the Bihar Agriculture Produce Marketing Board, as they were working as an employee of the Marketing Board are entitled for their regularization and further a challenge has been made to the order contained in Memo No.1743 dated 27.03.2012, which has been passed by the Secretary, Agriculture Department, Government of Bihar, Patna whereby and whereunder again reiterated the opinion



about the issue of absorption of the petitioners in negative way and rejected the claim of the petitioners for their absorption in services.

The petitioner nos.1 and 2 were initially appointed on 13.02.1976 and 25.02.1976 respectively on the post of Check Post Guard on daily wages basis in the Agriculture Produce Market Committee, Shahpur Patori, District-Samastipur. Thereafter, the petitioner no.1 was again appointed on the post of Fee Collector (Class III) vide office order no.16/79 dated 13.06.1979, in pursuance of the appointment, the petitioner no.1 joined the new post on the same day, whereas the petitioner no.2, who was also working as daily wager as Check Post Guard, was appointed as Fee Collector on 18.11.1977, accordingly joined new place of posting. The services of the petitioners were terminated vide Memo No.482 dated 21.10.1981, which was challenged before this Court in CWJC No.3456 of 1982 in the name and style of Kamal Rajak and Ors, which was disposed of vide order dated 3.09.1983. Again CWJC No. 8535 of 1992 (Bihar Rajya Krishi Vipanana Parishad Arajpatrit Karamchari Sangh and Ors.) was filed and thereafter, several writ applications bearing CWJC Nos.11847 of 2000, 9446 of 2000 and 8952 of 2002 were also filed. All the aforesaid cases were related to the payment of salary and dearness allowances.



The legislature of Bihar have enacted the Bihar Agriculture Produce Marketing (Repeal) Act, 2006 and through that legislation, the entire marketing board has been dissolved. As per Section 6 of the Act, which stipulates the absorption of the Officers and Employees of the Bihar Agriculture Marketing Board/Market Committee/Bazar Samiti on the basis of recommendation of the Committee comprising of three Secretaries of the State of Bihar who shall prepare detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, other service conditions of officers and employees of the Board. Scheme prepared by group of Secretaries shall be placed before the State Government within two months from the date of enforcement of the Act. In pursuance of this clause, the three men Committee deliberated and decided the case of different class of persons, who would be absorbed in the services of the State of Bihar and till the period of absorption, they would be treated as an employee of the Board for the purposes of payment of salary and allowances as payable to the others and they will continue to discharge the duty till the decision taken by the State Government. The three men Committee considered and held that the daily wager employee does not fall in the category of “officers or employees” as mentioned in Section 6 of the Act and rejected the



claim of absorption of daily wager employee which came for consideration, which has been decided in *Nand Kumar case (supra)* having held that daily wager employee does not fall in the category of employee or officer. The petitioners were also terminated along with others. The different persons, who were employed as daily wagers, approached this Court raising a grievance that as per Section 6 of the Act, they are also an employee as mentioned in Section 6 (1) of the Repealed Act and their cases should have been considered for absorption. The petitioners had also filed the case for consideration of their absorption vide CWJC No.12583 of 2010 along with others and the Court has remanded the matter to the Committee comprising of three Members and the Committee vide its decision dated 26.08.2011 (Annexure-10) rejected the claim of the petitioners in view of the judgment of Division Bench passed in *Nand Kumar case (Supra)*, but at the same time, the Secretary, Government of Bihar has considered the recommendation of the Committee including the different orders passed by this Court and refused to oblige the employees for their regularization. Against the decision dated 26.08.2011, the State had filed LPA No.1329 of 2011 and in that case, the Court has opined that even after *Nand Kumar case*, the learned Single Judge referred the matter for consideration



before the Committee and the Committee has already taken a decision, in such circumstances, there was no need to proceed further but a liberty was granted to the respondents (petitioners in the present case) to challenge the order. In that manner, the present case has been filed.

The status of the petitioners was a daily wager and the three men Committee has arrived to a finding that they do not come under the four corners of “employees or officers”, “officers and employees” will be those who were working on a permanent basis and not on daily wager basis. In *Nand Kumar case (supra)*, a question has arisen as to whether the daily wager would come in the four corners of the officers and employees mentioned in Section 6 of the Repealed Act and the answer has been given in negative and *Nand Kumar case* has been approved by the Hon’ble Supreme Court. Counsel for the Petitioners have not brought to the notice any judgment and order of any Court thereby in any manner *Nand Kumar Case* has been diluted.

In such view of the matter, the Division Bench judgment is completely binding on this Court and clearly covers the entire field of present case. So it is a binding precedent. Learned counsel for the petitioners has only tried to persuade this Court that the daily wagers will also come under Section 6 of the



Repealed Act and the earlier Court has not dealt with the manner it was required to do, but in the present situation, sitting in single, where Division Bench is binding on this Court as well as in a situation where the judgment has been approved by the Hon'ble Supreme Court, this Court may have very sympathy for the relief but sympathy should not be misplaced, when Section 6 of the Repeal Act has been interpreted and held that daily wagers are not entitled for consideration for absorption.

In such view of the matter, this Court does not find any merit in this writ application and the same is, accordingly, dismissed.

However, if the petitioners are entitled to any compensation, the State would ensure the payment of the same.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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