

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12655 of 2017

1. The State of Bihar, through the Sub-Divisional Officer-cum-Special Officer, Krishi Utpadan Bazar Samiti (Dissolved), Banmankhi, Purnea.
2. The Sub-Divisional Officer-cum-Special Officer, Krishi Utpadan Bazar, Samiti (Dissolved), Banmakhi, Purnea.

... .. Petitioner/s

Versus

Baleshwar Prasad Sah, S/o Late Rup Narayan Sah, resident of Madheli Chowk, Madhubani, P.S. Khaat, District- Purnia.

... .. Respondents

With
Civil Writ Jurisdiction Case No. 17206 of 2017

Baleshwar Prasad Sah, S/o Late Rup Narayan Sah, resident of Mohalla- Majhali Chowk Madhubani, P.S. - K. Hat, District - Purnea.

... .. Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Agriculture, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Deptt. of Finance, Govt. of Bihar, Patna.
5. The Agriculture Production Commissioner, Govt. of Bihar, Patna.
6. The Under Secretary, Department of Labour, Employment and Training, Govt. of Bihar, Patna.
7. The Administrator, Bihar Agriculture Marketing Board (Dissolved), Pant Bhawan, Bailey Road, Patna.
8. The Sub-Divisional Officer-cum-Special Officer, Agriculture Produce Market Committee, Dissolved, Banmankhi, Purnea.
9. Kula Nand Mandal, S/o Sri Jagarnath Mandal, resident of Village - Tarabari, P.O. - Damra Via Araria, District - Araria.
10. Smt. Mani Devi, W/o Late Mahabir Balmiki, resident of village - Darjipatti,



Ward No. 10, P.O. - Banmankhi, District - Purnea.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 12655 of 2017)

For the Petitioner/s : Mr. Sarvesh Kumar Singh, A.A.G.-13
For the Respondent/s : Mr. Ravi Kumar, A.C. to A.A.G.-13

(In Civil Writ Jurisdiction Case No. 17206 of 2017)

For the Petitioner/s : Mr. Sunil Kumar Verma
For the Respondent/s : Mr. Raghwanand - GA-11

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 24-06-2019

Heard learned counsel appearing for the respective parties.

2. Both the writ petitions are arising from the award dated 13.02.2015 passed by the Labour Court, Purnea, in Reference Case No.02 of 2004, by which the Labour Court has directed the management to reinstate Baleshwar Prasad Sah, petitioner of C.W.J.C. No. 17206 of 2017 along with other benefits and further having held that Baleshwar Prasad Sah is entitled to get the previous due wages and benefits from the management as has been given by the management to its employees, namely, Kula Nand Mandal and others.

3. The State has challenged the award in its entirety whereas, Baleshwar Prasad Sah, has sought a relief to implement the award in its true letter and spirit and also give



direction to take immediate and effective steps for his absorption treating him to be an employee of the Bihar Agriculture Marketing Board/Market committee/ Bazar Samiti in terms of Section 6(i) of the Bihar Agriculture Produce Market (Repeal) Act, 2006 declaring and deeming the petitioner to have been regularized under the Bihar Agriculture Marketing Board/ Market Committee/ Bazar Samiti in view of the recommendation contained in memo no. 162 dated 18.09.2002 as Tax Collector under the Market Committee, Banmankhi, Purnea with effect from 1980 i.e. from the date Kula Nand Mandal, Chotkan Rishi Deo and Smt. Mani Devi were regularized in service.

4. In the present case, the question has been raised by the State as to whether the award given by the Labour Court Purnea, can be implemented against the State of Bihar in view of fact that the Legislature of State of Bihar by an enactment viz. Bihar Agriculture Produce Market (Repeal) Act, 2006, has abolished the Bihar Agriculture Marketing Board/ Market Committee/Bazar Samiti and in consequence thereof, only the persons who were working as permanent employees in the Marketing Board or Bazar Samiti having been absorbed and the persons who were working as daily wagers have not been



granted such benefit of absorption in service in the State of Bihar.

5. The short facts of this case are that the petitioner-Baleshwar Prasad Sah was appointed as daily wager on Class-III post as Shulk Sangrahkarta along with others vide Resolution no.22 of 1977 dated 27.01.1977, in Agriculture Produce Market Committee, Banmankhi in the district of Purnea, accordingly, the petitioner joined the service of Agriculture Produce Market Committee. As per the petitioner, Baleshwar Prasad Sah, he was accorded the benefit of confirmation in light of the recommendation of the Executive Committee. At the time of entry in service, he was matriculate, but later on he acquired the qualification of B.A. It appears from the record that the petitioner has worked with the management from 28.1.1977 to 5.12.1979 and thereafter he was retrenched by the management without any notice, but it appears that, in actuality, the petitioner has worked with the management from 28.1.1977 to 5.12.1978 and thereafter he was terminated from the service orally. It appears that after oral communication of termination order, he approached different authorities of the Labour Department, ultimately, the Government of Bihar in exercise of Power under Section 10(1) (C) read with Section 2(A) of the Industrial



Disputes Act, referred the dispute in connection with termination of service of the petitioner to the Labour Court in the following terms “whether the termination of service of Sri Baleshwar Prasad Sah, workman, by the Marketing Officer, Krishi Utpadan Bazar Samiti, Banmankhi, Purnea, is justified or not? if not, what relief Sri Baleshwar Prasad Sah is entitled to?”. The case was registered as Reference Case No. 02 of 2004, the workman as well as the Management appeared and filed their respective written statement and later on, the workman-Baleshwar Prasad Sah, has exhibited 7 documentary evidence which were marked as Exhibits 1 to 7, he also examined three witnesses in the shape of A.W.1-Baleshwar Prasad Sah, A.W-2-Bindeshwari Thakur A.W.-3-Shiv Narayan Sah and they have supported the claim of the petitioner-workman. The management in its written statement has admitted that Mani Devi, Kula Nand Mandal and Chhotkan Rishideo, were reappointed by the appointment Samiti, Patna, but the management has no knowledge on which basis they were reappointed and after due consideration of evidence, the Labour Court arrived to a finding that Baleshwar Prasad Sah, petitioner, had worked under the management from 28.1.1977 to 5.12.1979, thereafter he was terminated from the service by the



management without giving any notice or notice of pay and compensation, but on perusal of the award which talks of the inquiry report, it transpired that the petitioner-workman had worked under the management from 28.1.1977 to 5.12.1978, having held that retrenchment of said workman by the management is against the natural justice and against the provisions of Section 25F of the Industrial Disputes Act. It has further been held that Baleshwar Prasad Sah, petitioner, had worked for 514 days continuously but the management did not comply the provisions of Section 25F of the Industrial Disputes Act, so it is crystal clear that Baleshwar Prasad Sah has illegally and arbitrarily been retrenched by the management, accordingly, granted the relief of reinstatement along with other benefits at par with Kula Nanda Mandal and other workmen.

6. Before dealing with the entitlement of the petitioner as per award, some historical fact has to be narrated, the Legislature of State of Bihar has passed an Act, namely, Bihar Agriculture Produce Market (Repeal) Act, 2006 (hereinafter referred as “the Repeal Act”). The Repeal Act has been made effective from 01.09.2006, by which the Bihar Agriculture Produce Market Act, 1960 and the Rules of 1975 framed thereunder stood repealed save and except certain decisions



rendered earlier as well as the disciplinary proceedings initiated or pending against the employees of the Board. The validity of the Repeal Act was challenged and the same has been held to be a good law by this Court, hence the Repeal Act has been held to be *intra vires*. As per under Section 4 of the Repeal Act, the assets and liabilities of the Bihar Agriculture Produce Marketing Board or of the Marketing Committees or Bazar Samiti constituted under the Act of 1960, have vested in the State of Bihar. The State Government by virtue of Section 5 has power, authority and jurisdiction to issue necessary directions or orders to secure the object of the Repeal Act, 2006 and Section 6 also provides the consequences of the abolition of the Marketing Board or Market Committee or Bazar Samiti. Section 6 provides that 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 it provided hereafter. It further provides that the Government would 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. Thereafter, the Government of Bihar in the Department of Agriculture come out with a Resolution dated 15.03.2007, stipulating that it was permissible or open for the Government or the Committee to decide that workers employed on daily wages shall be removed from the service immediately after payment of salary for one month. Under that provision, a question arose as to whether the daily wage employees will fall under Section 6(i) of the Repeal Act, 2006 as the said Section stipulates and comprehends the absorption of “all officers and employees”. Certain daily wage employees were not getting a chance of their absorption, approached this Court in C.W.J.C. No. 16109 of 2008 (Nand Kumar vs. State of Bihar and Ors.) and other analogous cases, which is reported in **2010 (1) PLJR 763**, wherein specific question has been raised as to whether the daily wage employees like the petitioner are included in the word of “all officers and employees” as used in Section 6(i) of the Repeal Act, 2006 and whether the Committee of Secretaries constituted under Section 6(ii) would prepare a scheme denying absorption on the ground of employee being appointed by the Board/Market Committee/ Bazar Samiti, on daily wage basis or it obligates to prepare a scheme in which



absorption must also be provided for daily wage employees. The Court has considered the different facets of the Act and Scheme, its effect, having held that Section 6 itself maintain a distinction between daily wages employees and the regular employees of the Board and by no stretch of imagination such provision can be construed so as to treat the daily wages employees like the petitioners to have acquired same status as the regular employees only because the Board as per Act of 1960 stood repealed. The Court has also considered the effect of Clause “... shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act...” having held that the said clause itself conveys the intention of the Legislature in no uncertain terms that officers and employees of the Board would retain their status and entitlement and if the same are different, the difference would continue and after elaborate discussions, the Court has held that 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 Committee, for the purposes of scheme of absorption, looking to the nature of appointment the Committee of Secretaries cannot be faulted in treating the daily wages employees on a different footing and deciding for their removal



from service. It has further been held that such recommendation of the Committee 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 subject to 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. The Court has also considered the effect of judgment rendered in the case of ***Secretary, State of Karnataka and Others vs. Uma Devi and Others***, reported in ***(2006) 4 SCC 1***.

7. It will be relevant to quote paragraph no.8 of the said judgment, which reads as under:-

“8. 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 purposes of scheme of absorption. The power to frame a detailed scheme of absorption with power for retirement in various forms, which seen in the light of precarious nature of a daily wager’s right 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 matter, 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.”

8. The aforesaid judgment was challenged before the Hon’ble Supreme Court by Nand Kumar in Civil Appeal No. 2835 of 2014 unsuccessfully having held that Section 6 of the Repeal Act, 2006 does cover the employees and officers mentioned under that Section, but does not envisage coverage of daily wage employees for consideration of absorption and did not find fault with the judgment and order of this Court, accordingly, affirmed the same.

9. In view of the aforesaid discussion as well as the award passed by the Labour Court by which the Labour Court granted the relief of reinstatement and having held that Baleshwar Prasad Sah, petitioner, was never been regularized in



service, but his status was a daily wage employee though certain persons namely, Kula Nand Mandal, Mani Devi and Chhotkan Rishideo were appointed and regularized in service. So the resultant effect is that the status of petitioner on passing of the award will be as that of the daily wager and the question would arise as to whether the award can be implemented against the State of Bihar.

10. From the record, it does not show that the Labour Court was brought to the notice of the Repeal Act, 2006, thereby the Bihar Agriculture Produce Market Act, 1960 and the Rules of 1975 framed thereunder stood repealed and its effect having not been considered. The Labour Court has also not considered the fact that on the date of passing of the award the Bazar Samiti/ Marketing Board or any Committee was not in existence in view of the fact that Repeal Act, 2006 was already brought to its force, so the status of the petitioner, at best, can be said to be daily wager, cannot be treated, at any time, to have been regularized in service. In the supplementary affidavit, Baleshwar Prasad, petitioner, has stated that his case is identical to Kula Nand Mandal, Mani Devi and Chhotkan Rishideo, whereupon, this Court had asked the State to file its reply to the supplementary affidavit. Whereupon, a 2nd supplementary



counter affidavit has been filed by the State, wherein it has been explained that the aforesaid persons were working along with the petitioner, Baleshwar Prasad Sah, as daily wage employees from January, 1977 to June, 1977 at Market Committee, Banmankhi, Purnea and vide letter no.922 dated 11.06.1977 they were retrenched from the service. In view of letter no.152 dated 10.01.1978 of the Board, the Market Secretary, A.P.M.C., Banmankhi, Purnea, issued a notice dated 16.01.1978 informing all such retrenched daily wagers including the present petitioner to appear before the Board on 19.1.1978 along with all certificates for interview, whereupon, the petitioner and others appeared in the interview and the Bihar State Agriculture Marketing Board vide letter no.2853 dated 19.4.1980 reappointed Kula Nand Mandal, Mani Devi and Chhotkan Rishideo. Kula Nand Mandal, accordingly, joined the service on 22.4.1980, Smt. Mani Devi joined on 01.04.1980 and Chotkan Rishideo joined on 10.11.1980. Kula Nand Mandal was appointed on the post of Market Supervisor whereas Chotkan Rishideo and Smt. Mani Devil were appointed on class-IV posts, but the petitioner could not be regularized in service as he could not succeed in the interview, so he remain under the list of retrenched daily wage employees. Hence, from the reply of the



State, it appears that after the retrenchment the petitioner was called upon to face the interview but he could not succeed whereas three persons, namely, Kula Nand Mandal, Mani Devi and Chhotkan Rishideo succeeded and regularized in service and as such, the petitioner cannot compare himself with those three persons, who were reappointed after the interview, but the petitioner failed to succeed and remain under the list of retrenched daily wage employees.

11. In view of the aforesaid discussions, it is very much clear that the status of the petitioner was/is daily wage employee and when the matter was referred, already the Repeal Act, 2006 was enacted, thereby the Marketing Board/ Bazar Samiti has been abolished, under Section 6 of the Repeal Act, 2006 certain officers and employees, save and except the daily wage employees, were allowed to continue on the respective posts, but at the later stage, the Committee of three Secretaries was constituted to prepare the scheme for absorption of the employees but the committee has taken a decision that the daily wage employees cannot be absorbed in service. This fact was not brought to the notice of the Court below nor the State of Bihar was impleaded as party to the reference and as such, there was no occasion for the State of Bihar to bring this fact to the



notice of the Labour Court. Hence, this Court cannot give a direction to the State of Bihar to regularize the service of the petitioner as his status was/is a daily wage employee and under the scheme the daily wage employee has been excluded from consideration of absorption.

12. Further question would arise as to whether Section 25F will be applicable when the Board, Samittee itself have been abolished. Section 25FFF deals with the compensation to the workman in case of closing down of the undertaking and it provides that in the event of closing down of any undertaking for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub- section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. So, maximum the petitioner can get compensation as well as one month's notice pay as provided under Section 25FFF of the Industrial Disputes Act in view of fact that during the pendency of the case, Repeal Act, 2006 has been made effective and as such, the petitioner cannot be granted the relief of reinstatement or back wages as has been directed by the Labour Court.



13. In view of the aforesaid discussions, the impugned award dated 13.2.2015 passed by the Labour Court, Purnea, in Reference case No.02 of 2004 does not sustain, accordingly, the same is quashed.

14. In such view of the matter, C.W.J.C. No.12655 of 2017 filed by the State of Bihar is allowed and C.W.J.C. No.17206 of 2017 filed by Baleshwar Prasad Sah is dismissed. However, the petitioner, namely, Baleshwar Prasad Sah, can claim the relief of compensation, as has been stated hereinabove, from the assets and liability of the Bihar Agriculture Marketing Board/Market Committee/ Bazar Samiti.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	24.06.2019
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