

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1177 of 2019

In
Civil Writ Jurisdiction Case No.11952 of 1998

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Bihar State Agricultural Marketing Board through the Administrator-cum-Special Secretary, Government of Bihar, Patna.

... .. Appellant/s

Versus

1. Bihar Rajya Krishi Vipnan Parishad Bazar Praveshik Sangh through its Secretary Ram Binod Singh.
2. Ram Binod Singh Son of Late Bhekhdhari Singh Resident of Village-Supaul, P.S. Tajpur, District- Samastipur.
3. Ram Babu Singh Son of Sri Gorakh Singh Present posted as Marketing Secretary, Pupri, Sitamarhi and President, Bihar Rajya Krishi Vipnan Parishad Bazar, Parvekshak Sangh.
4. Bihar State Agriculture Marketing Board through its Managing Director.
5. The Managing Director, Bihar State Agriculture Marketing Board, Pant Bhawan, Jawaharlal Nehru Marg, Patna.
6. D.K. Chaudhary Son of not known Legal Assistant, Bihar State Marketing Board, Patna (Now Dissolved) through Bihar Agriculture Produce (Market Repeal Act, 2006).

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sarvesh Kumar Singh, AAG 13 Mr. Arya Achint, AC to AAG 13
For the Respondent/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Jai Prakash Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-01-2023

Re: I.A. No. 1 of 2019

Heard I.A. for condonation of delay of 448 days in filing
present L.P.A. Perusal of the dates, it is evident that C.W.J.C. No.



11952 of 1998 was decided on 26.04.2018. Feeling aggrieved by order of the learned Single Judge, the appellant filed Civil Review petition bearing No. 564 of 2018 on 13.12.2018 and it was decided on 03.04.2019. Thereafter, L.P.A. No. 1177 of 2019 was filed on 12.09.2019. Delay is required to be taken note of from the date of dismissal of Civil Review petition i.e. 03.04.2019 to 12.09.2019. Therefore, delay is only for about 132 days.

2. Perusal of the pleadings, it is evident that it is a case of Bihar State Agricultural Marketing Board (for short "Board") and it is not an individual case so as to take immediate steps to file L.P.A. In other words, the file has to pass through many staff including the panel counsel of the Board, therefore, the appellant has made out a *prima facie* case to condone the delay.

3. Delay in filing L.P.A. has been opposed by the respondents that there is enormous delay and reasons have not been assigned so as to condone the delay. It is also submitted that Hon'ble Apex Court has deprecated the tendency in condoning the delay in respect of litigations filed by the State or its institutions. However, we are convinced with the statement made in the I.A. for condonation of delay read with the facts of the case that actual delay is only 132 days and not 448 days. Delay is required to be taken note of with reference to disposal of Civil Review dated



03.04.2019 and not from the order of the learned Single Judge dated 26.04.2018, the date on which C.W.J.C. No. 11952 of 1998 has been decided. Accordingly, appellant has made out a *prima facie* case to condone the delay of about 132 days in filing L.P.A.

4. Respondents were stated to be Market Supervisors at the relevant point of time in the appellant Board. The Board had taken a decision to upgrade the pay scale of the Market Supervisors on 19.10.1993. The pay-scale of Market Supervisors was carried a sum of Rs. 1320 to 2040. After upgradation, it was Rs. 1500 – 2750. On 03.08.1994, State Government is stated to have revised the pay scale in the light of 5th Pay Revision committee recommendation *vide* Memo No. 566 dated 03.08.1994. The aforementioned revised pay scale is applicable to all the Bureau of Public Enterprises including the Board - appellant. The appellant could not apprise this Court as to what is the revised pay scale of the Market Supervisors in terms of the State Government decision dated 03.08.1994. The upgradation of pay scale decision taken by the Board has been given effect to on 05.09.1994 despite there was objection of the State Government dated 30.08.1994. Such upgradation of the pay scale has been given effect from 01.07.1994. Further, the State Government has taken steps to cancel the Board's decision relating to upgradation on 18.10.1994.



Consequently, Agricultural department has directed the Board to undertake steps insofar as recovery of excess payment made to the Market Supervisors. Further, once again State Government issued an order on 28.09.1995. Despite these facts and circumstances once again the Board has taken a decision to give effect to the 19.10.1993 order on 23.05.1996. Further a communication has been made on 16.09.1997 for approval of upgradation, the same was not appreciated by the State Government. In the result, on 25.10.1997 Board has taken a decision to cancel the upgradation decision.

5. Feeling aggrieved and dissatisfied with the order of cancellation of upgradation dated 25.10.1997 one writ petition was filed and it is numbered as C.W.J.C. No. 11952 of 1998. It was decided on 26.04.2018 in favour of the respondents. Civil Review Petition was filed and it was numbered as 567 of 2018 and it was dismissed on 03.04.2019. Hence the present L.P.A. was filed on 12.09.2019.

6. Core issue involved in the present *lis* is whether service condition of an employee of the Board could be altered by the Board on its own or for such alteration of service condition of the employee of the Board, if any financial implication is involved.



In that event, whether State Government and the approval of concerned department is required or not?

7. From perusal of the records, it is evident that impugned action of the Board against the respondent was without providing any opportunity of hearing to the respondents. In other words, cancellation of upgradation of pay scale read with recovery is without hearing the respondents. Apex Court recently in the case of ***Deepak Ananda Patil vs. The State of Maharashtra and Ors.***, **2023 LiveLaw (SC) 30, Para 17** held as under:

“17. It is a well-established principle of administrative law that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it and given an opportunity to respond to it. Surveying the precedents extensively, MP Jain & SN Jain's treatise on Principles of Administrative Law¹ notes that:

"If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to deal with it. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. If without disclosing any evidence to the party, the authority takes it



into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings.”

8. Apex Court in the case of ***Esteem Properties Pvt. Ltd. vs. Chetan Kamble and others*** reported in **2022 (4) Scale 284; 2022 SCC Online SC 246, Para 33** held that invariably if any adverse orders are passed against an employee in the absence of providing material and obtaining explanation, such actions are arbitrary and illegal. Para 33 of ***Esteem Properties Pvt. Ltd. vs. Chetan Kamble and others*** reads as under:

33. Order dated 17.03.1998 against the aforesaid order was passed without following the principles of natural justice and without providing adequate hearing to the Gonsalves family. This Court has clearly advocated the importance of natural justice and an opportunity of hearing to be afforded to the affected party in any administrative or quasi-judicial proceedings umpteen number of times. The aforesaid principle also finds its place in Section 258 of the MLR Code, which reads as under:

“258. (1) The State Government and every revenue or survey office may, either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office



and pass such orders in reference thereto as it or he thinks fit:

Provided that,-

(i)

(ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order”

9. In view of these facts and circumstances, the appellant has not made out a case. However, appellant is at liberty to proceed to issue a show cause notice and obtain explanation from each of the affected employee and thereafter, proceed to pass speaking order after considering each of the contentions to be raised by the respective employee in their explanation. The respondent Board is hereby directed to pass a speaking order as to any alteration of service condition of an employee of the Board including financial implications, in that event is it mandatory to obtain approval of the State Government or not? In this regard, speaking order shall be passed and communicated to the respective affected parties within a period of three months from the date of receipt of this order.

10. At this stage, learned counsel for the appellant – Board submitted that Board is not existing in the eye of law as on today. In that event, competent authority like Administrator/State



Government may take decision on the petitioner’s explanation even notice shall be issued to the respondents by the Administrator or State Government in the absence of existence of the Board. In the light of the above analysis of the *lis* orders dated 26.04.2018 and 03.04.2019 passed in C.W.J.C. No. 11952 of 2018 and Civil Review No. 564 of 2018 are set aside and L.P.A. of the Board is allowed in part to the above extent.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	
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