

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.805 of 2006
IN
Civil Writ Jurisdiction Case No. 1388 of 2001**

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1. The State of Bihar through the Secretary, Urban Development Department, Government of Bihar, Patna.
 2. The Secretary, Urban Development Department, Government of Bihar, Patna.
 3. The Secretary, Cane Development Department, Government of Bihar, Patna.

....Respondents Ist set..... Appellants.
Versus

1. Lalit Mohan Prasad, son of Sri Braj Mohan Prasad, resident of Mohalla-Diwan, P.S. Patna City, District-Patna at present working as Special Officer, Barh Municipality, Patna.
.....Petitioner...Respondent Ist Set.
2. The Bihar State Sugar Corporation Limited through its Managing Director, Punai Chak, Patna.
3. Shree Narayan Yadav, son of, at present, not known to the appellants, the Minister Urban Development and Chairman, Patna Regional Development Authority, Patna, resident of 22 Bailey Road, Shastrinagar, P.S. Phulwarisharif, District-Patna.

.... Respondent Nos.4 and 5....Respondents Second Set.

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Appearance :

For the Appellants : Mr. Bishwa Bibhuti Kumar Singh, AC to PAAG, Bihar.
For the Respondents : Mr. Ajay Kumar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-07-2015

Though the learned Single Judge dismissed the writ petition filed by the contesting private respondent no.1, the observations made by the learned Single Judge, while doing so, apparently substantially allowed the writ petition being C.W.J.C. No.1388 of 2001 dismissed on 13.07.2006. Hence, this Intra Court Appeal.

2. The facts are not in dispute. The writ petitioner, who is private respondent no.1 in this appeal, was the Welfare Officer under the Bihar State Sugar Development Corporation and posted at Bhabhua.

3. It appears that the State Government, finding that this Sugar Corporation alongwith several other Corporations and Cooperative Societies under the control of the State had virtually become defunct, took a conscious decision to move out various sections of employees from such Corporation and Cooperatives and depute them in various other State Departments, Authorities and Organizations with the object of absorbing them there permanently. It is pursuant to the aforesaid decision that the State Government issued Notification No.4476 dated 31.12.1999 (Annexure-‘5’ to the writ petition). This Notification was issued by the State Government in the Department of Urban Development clearly stating that Lalit Mohan Prasad, the Welfare Officer, Bihar State Sugar Corporation, Barh, Fatuha Unit, is being taken into service of the Department and, thereafter, being posted as Special Officer, Barh Municipality, Patna, under the provisions of Section 386(1)(b) of the Bihar and Orissa Municipal Act, 1922. It appears that, accordingly, the writ petitioner-private respondent no.1 in this appeal started functioning as Special Officer, Barh Municipality, Patna, but then in the year 2001, as there

was apprehension that the Sugar Corporation having become defunct, like several other persons, the State may repatriate the writ petitioner to the Sugar Corporation. The consequential result thereof would be that the writ petitioner would either face termination/retrenchment as there was no work in the Corporation. Hence, the writ petition.

4. The learned Single Judge clearly held that it was not the case of deputation but in view of Annexure-‘5’ to the writ petition, it was a case of fresh appointment in the Municipality but there being no reasonable apprehension, the writ petition was dismissed. It is in view of this observation that the State being aggrieved has filed this Intra Court Appeal.

5. We may note that there were large number of such persons, who were moved from various Corporations/Cooperatives having become defunct. They include the Engineers from BISCOUMAN and various other Corporations under similar policy decision of the State Government and they were also threatened for repatriation on the ground of merely being on deputation to PRDA and other organizations. Some of the writ petitions were allowed and some were dismissed. From all these writ petitions, appeals were preferred and ultimately they were decided by the Division Bench of this Court in LPA No.608 of 2006 {Avinash Vatsyayan Vs. The State of Bihar and Ors} and other analogous appeals. Except for one LPA,



all the other writ petitions were allowed by judgment and order dated 19.04.2010 and orders were passed in the connected appeals accordingly and after examining various aspect of the matter, the Division Bench held that the policy of the State Government was clear. It was not a case of mere deputation but a case of deputation with a policy to absorb. In view of the aforesaid Judgments in the LPA, this appeal also has to be dismissed.

6. In view of the facts, stated above, we must state that the action of the State is evident from Annexure-‘5’ to the writ petition. Firstly, the writ petitioner/respondent no.1 in this appeal was the Welfare Officer in the Sugar Corporation and his services were taken away from the Corporation and he was absorbed in the State Government Service and then as a State Government Officer he was posted as Special Officer, Barh Municipality, Patna. These are three steps which envisage that as a result of the State Government Notification being issued, the services of the writ petitioner/respondent no.1 in this appeal were already absorbed in the State Government as a Special Officer in the Barh Municipality, Patna. Thus, the stand of the State that post of the Special Officers does not exist or the cadre of Special Officer does not exist, specially in view of the Bihar Municipal Act, 2007, the writ petitioner should go back to the Sugar Corporation is not correct. Under no

circumstance, he could go back to the Sugar Corporation because his services have already been absorbed by the State Government. It is for the State Government to find out appropriate post for him and even if he cannot be continued as a Special Officer, the post itself being not existence, the writ petitioner cannot made to suffer without proper post or without proper pay.

7. Following the view taken by the Division Bench of this Court in LPA No.608 of 2006, which was decided on 19.04.2010, we dismiss this appeal with the directions and observations made above.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-P.S.

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