

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7440 of 2013

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Mithilesh Kumar Singh S/o Late Indra Narayan Singh, R/o Sukhashan, P.O.-
Sukhasan, P.S.- Kumarkhand, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Finance Department, Old Secretariat, Patna
3. The Deputy Secretary, Finance Department, Old Secretariat, Patna
4. The Deputy Director, National Saving Tirhut Division, Muzaffarpur,
P.O.+P.S.+District- Muzaffarpur
5. The Executive Officer, National Saving Purnea, P.O.+P.S.+ District- Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh

For the Respondent/s : Mr. AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-05-2016

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

In this case, the petitioner in the first instance has filed
an application with a prayer that the writ of mandamus be issued
commanding the respondent authority for his absorption against the
post over which he has been discharging the duty in the department or
against any other appropriate place taking into consideration the law
propounded in CWJC No. 10016 of 2007 (Bihar State Government
Employees Association and Ors. vs. the State of Bihar and Ors.).

The petitioner was working in the Bihar State
Cooperative Marketing Union (BISCOMAUN) for his rehabilitation,

he was deputed in National Saving Department, Government of Bihar and in the office of Deputy Director, Koshi Division, Saharsa.

After a long lapse of time, the Government has taken decision to repatriate the service of petitioner and other in their parent organisation i.e. BISCOMAUN, felt aggrieved, on the reason that the BISCOMAUN is a defunct organisation, on that account the petitioner was brought to the service of the State Government, i.e. department of National Saving Tirhut Division is a wing of the Finance Department. The State Government, vide letter dated 16.11.99 decided that those, who have been sent on deputation on or before 16.11.99, will not be repatriated from their parent organisation, the Government would absorb them, but those who have been sent on deputation after 16.11.99, would not make claim for absorption over the post on which they were deputed.

In support of the contention, the counsel for the petitioner has placed reliance on a judgment of this Court passed in CWJC No. 10016 of 2007 where this Court, in different paragraphs, dealt with the issue in following manner:-

“The Respondents themselves have absorbed service of similarly situated employees as per Annexure-7 series and Annexure-8. Now, they can not deny same benefit to the petitioners, who have worked for such a



long time with legitimate expectation of absorption. Petitioners have annexed the order passed in C.W.J.C. No. 8050 of 2003, Annexure-10, whereby in the similar circumstance, surplus employees of BISCOMAUN were directed to be absorbed. Counsel for the petitioners have also brought before this Court the order passed in a batch of Letters Patent Appeals, preferred by surplus employees of BISCOMAUN and other Boards, Corporations, who were going to be repatriated to the parent Department and whose Writ Applications have been dismissed by the Single Judge. All these Letter Patent Appeals were allowed with a direction to the Respondents to absorb their services, permanently in the Department, they were working on deputation, subject to this condition that they were brought on deputation, prior to cut off date of 16.11.1999. The State Government preferred SLP before the Hon'ble Supreme Court against the orders passed in all these LPAs and the same was dismissed. I find that all petitioners who are members of Petitioner No. 1 "Association" as well as other petitioners, stands on similar footing as appellants of the LPA No. 608 of 2006 and its analogous



appeals, as such entitled for similar relief. Accordingly, the Respondent Nos. 2, 3, 4 and 5 are directed to pass necessary order of absorption of all these petitioners. None of the petitioners shall be repatriated to those defunct Boards, Corporations, Public Sector Undertakings / Enterprises, which were their parent Department. Petitioners will be allowed to superannuate from the posts, they are working. They will be paid their salary, pensionary benefits, remaining on the same post.”

The order of single Judge was challenged in LPA No. 1831 of 2011 (The State of Bihar and Ors. Vs. Bihar State Government Employee's Association and Ors.), there the Division Bench affirmed the order passed by the single Judge and so much so that this issue was taken into consideration in LPA No. 608 of 2006 (Avinash Vatsyayan vs. the State of Bihar and Ors.) there also the Division Bench has occasioned to deal with identical issue about the repatriation of the persons who were sent on deputation for the purposes of rehabilitation, the Court has taken a view that the employees were brought for the purposes of rehabilitation and absorption, it will not be a fair act on part of the State to again ask them to return back to their parent organisation which is a defunct

organisation, it will be nothing, but termination of their services as in the said organisation aggrieved employees would not be getting proper salary, nor retired employees were/are getting any financial benefit, on that score, the Court intervened, passed the following order:-

“In the light of what has been discussed and held above, it follows as a logical corollary that all the appeals must succeed except L.P.A. No. 1110 of 2004. Accordingly, the judgment and orders under challenge in other appeals are set aside. Further, the impugned orders or actions under challenge whereby the appellants have either been ordered to be repatriated or are threatened with repatriation are quashed. The respondent-authorities are directed to treat the deputation of appellants not as simple deputation but one under a valid policy for the purpose of rehabilitation or absorption through the device of transfer of service and to take follow up action, if required, within three months. The respondents will also keep in mind and act as per earlier judgments which were accepted by them and similarly situated employees were absorbed because the State and its officials, i.e., the respondents are duty



bound to ensure equality of treatment to the appellants. Till such decision or follow up actions are taken the appellants shall be allowed to continue on the posts which they held on deputation and for all practical purposes they shall be treated to be the employees of the concerned departments where they are/ were working on deputation. The writ petitions are allowed to the aforesaid extent. It is made clear that if, on account of the judgment and orders under appeals any of the appellants whose appeals have been allowed have been repatriated from their posts under the State or dismissed from service, such impugned or consequential orders of repatriation or dismissal shall stand quashed and they shall be reinstated and allowed to work with all consequential benefits. In the facts of the case there shall be no order as to costs.

L.P.A. No. 1110 of 2004 has to be dismissed for two reasons. Firstly, because nobody has appeared to press this appeal and secondly because the appellants of this appeal were admittedly sent on deputation in the year 2001 which was after the cut off date of 16-11-1999 and hence their initial deputation itself was illegal and

contrary to the revised policy of the State Government as per law declared by a Division Bench of this Court in the case of State of Bihar Vrs. Gopal Prasad, 2003(4) PLJR 495. Hence, while other appeals stand allowed as indicated above, this appeal is dismissed but without costs.”

This matter again came for consideration in LPA No. 172 of 2010 (The State of Bihar and Ors. vs. Navin Kumar and Ors) where the Court considered the order passed in Avinash Vatsyayan’s case (supra) and after considering the facts and attending circumstances, passed the order in favour of the employees interfered with the order of repatriation. It will be relevant to quote following paragraphs of the order:-

“The question regarding the status of employees of different Boards/Corporations of the State as also BISCOMAUN who had been taken on deputation in the State Government was the subject matter of litigation before this Court for a long period of time. The question raised in the present matter has been set at rest in a batch of Letters Patent Appeals headed by L.P.A. No. 608 of 2008 (Avinash Vatsyayan Vs. The State of Bihar & Ors.) by judgment and order dated 19th April, 2010,

in paragraph 24 of which it has been held as follows:

“24. In the light of what has been discussed and held above, it follows as a logical corollary that all the appeals must succeed except L.P.A. No. 1110 of 2004. Accordingly, the judgment and orders under challenge in other appeals are set aside. Further, the impugned orders or actions under challenge whereby the appellants have either been ordered to be repatriated or are threatened with repatriation are quashed. The respondent-authorities are directed to treat the deputation of appellants not as simple deputation but one under a valid policy for the purpose of rehabilitation or absorption through the device of transfer of service and to take follow up action, if required, within three months. The respondents will also keep in mind and act as per earlier judgments which were accepted by them and similarly situated employees were absorbed because the State and its officials, i.e., the respondents are duty bound to ensure equality of treatment to the appellants. Till such decision or follow up actions are taken the appellants shall be allowed to continue on the posts which they held on deputation and for all practical purposes they shall be treated to be the employees of the concerned departments where they are/ were working on deputation. The writ petitions are allowed to the aforesaid extent. It is made clear that if, on account of



the judgment and orders under appeals any of the appellants whose appeals have been allowed have been repatriated from their posts under the State or dismissed from service, such impugned or consequential orders of repatriation or dismissal shall stand quashed and they shall be reinstated and allowed to work with all consequential benefits. In the facts of the case there shall be no order as to costs.”

Learned Additional Advocate General No. 10 appearing for the State in the appeals is unable to show how the case of the writ petitioners in the present matters are any way distinguishable and the decision in Avinash Vatsyayan’s case (supra) is not applicable to their cases.

We are of the view that the cases of the writ petitioners – respondents are squarely covered by the decision in Avinash Vatsyayan’s case (supra) and no interference is called for to the orders of the writ courts.”

While the matter was pending before this Court, the State Government, vide order dated 26.06.2013, returned back the petitioner to his parent organisation which is under challenge.

The State has taken plea that the petitioner has been



repatriated in the parent organisation three years earlier, is not a defunct organisation, so much so he has been accepted in organisation without any objection and has been performing duty and has been receiving salary regularly whereas the counsel for the petitioner has disputed the fact that still the BISCOMAUN is not in position to pay the salary to the employees, produced a letter dated 3.8.2015 which indicates that the Government of Bihar has passed a Resolution in view of judgments passed in LPA Nos. 795 of 2006, 628 of 2006 and 680 of 2006 by which those, who were working in the BISCOMAUN, were brought to the service of the State Government, again the State Government decided to repatriate their parent organisation which was challenged in those writ petitions, the matter came to the L.P.A and the Court directed for their absorption which has been affirmed by the Supreme Court. The Government has implemented the order with respect to Kameshwar Prasad Singh and others thereby absorbed their services in terms of order passed in the aforesaid L.P.As. So the letter of the Government itself shows that certain Engineers of the BISCOMAUN brought to the service of the State of Bihar were repatriated, challenged the order, which was set aside and the Government in implementation absorbed their services. In such circumstance, the stand of State that petitioner should be repatriated stands illegal, as in

some case the employees of BISCOMAUN brought on deputation stood absorbed.

In such view of the matter, this Court feels that the order of repatriation is wrong and cannot stand the test of fairness. Accordingly, the order dated 26.06.2013 is set aside and direction is given to the State to pass an order for their absorption in terms of the order passed in LPA No. 608 of 2006. The petitioner should be given the same benefit as has been given to the appellants of LPA nos. 795 of 2006, 628 of 2006 and 680 of 2006.

With the above observation/direction, this petition is allowed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	
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