

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5857 of 2014

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Bhubaneshwar Prasad Singh, Son of Late Yogendra Prasad Singh, resident of Village - Rasalpur, Post Office - Rasalpur, Police Station - Patory (Mohanpur Op), District Samastipur, Presently Motor Vehicle Inspector (Suspended), RTA, Patna Office.

.... Petitioner.

Versus

1. The State of Bihar through the Commissioner-Cum-Secretary, Department of Transport, Government of Bihar, Patna.
 2. The State Transport Commissioner, Government of Bihar, Patna.
 3. The Bihar State Cooperative Marketing Union (BISCOMAUN) through its Managing Director, having Office At Biscomaun Bhawan, West Gandhi Maidan, Patna – 800001.
 4. The Managing Director, Biscomaun Bhawan, West Gandhi Maidan, Patna – 800001.
- Respondents.
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Appearance :

For the Petitioner : Mr. Anand Kumar Ojha, Adv.

For the State : Mr. Sunil Kumar Mandal, SC-3.

Mr. Bipin Kumar, AC to SC-3.

Smt. Neelam Kumari, AC to SC-3.

For BISCOMAUN : Mr. Ishwari Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

Date: 26-10-2016

The pleadings being complete, with consent of parties, this writ petition has been heard at this stage itself for final disposal.

The petitioner was originally an employee of

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the Bihar State Co-operative Marketing Union Limited (hereinafter in short as 'BISCOMAUN'). The BISCOMAUN is duly registered under the Bihar Co-operative Societies Act, 1935.

It appears that in the early 1990 the BISCOMAUN went into severe financial crisis. The government took decision to adjust the employees of the BISCOMAUN, wherever possible, in various government departments and permanently absorbed them therein accordingly. Apart from the petitioner, several other persons, who were employees of BISCOMAUN, were deputed to the Transport Department of the Government of Bihar for their absorption therein in the year 1994. An effort was made to revert back the petitioner and some other persons to the BISCOMAUN. This was resisted and, ultimately, the matter came to this Court in C.W.J.C. No.9170 of 2006 and analogous cases, which were allowed by the judgment and order dated 22.08.2012. This Court, *inter alia*, held that the petitioner and others would be deemed to have been absorbed in the Transport Department. This Court also held that it was wrong to say that the petitioner was not eligible to be appointed as Motor Vehicle Inspector. The order purporting to be an order

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reverting him to BISCOMAUN was also set aside. This order was passed in the year 2012. This order of the Writ Court has attained finality.

Early in the year 2013, it seems that petitioner got involved in a case in respect of disproportionate assets. As a consequence of the criminal prosecution having been launched in respect of disproportionate assets, the Secretary, Department of Transport put the petitioner under suspension in contemplation of the departmental proceedings. The departmental proceeding was then initiated by the transport authority and the Principal Secretary appointed the Inquiry Officer and the Presenting Officer. First, the Inquiry Officer submitted his report stating that the charges in the departmental proceeding and the criminal proceeding were virtually identical, it would not be proper to proceed with the departmental proceeding and submitted his report. From the record, it would appear that he was called by the Secretary and matters were discussed. He then submitted a report finding the petitioner guilty. Having received this enquiry report, the Secretary of the Department then took a decision to send the entire file to BISCOMAUN. It may be noted here that in the mean time, the Managing Director of the BISCOMAUN had

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NOT

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initiated a proceeding to compulsorily retire the petitioner but confronted with the order passed by Writ Court in the year 2012 with regard to his absorption to Transport Department. He recalled those proceedings noticing that the petitioner was no more an employee of BISCOMAUN, but has been absorbed in the Transport Department. Now, when the files were sent by the Transport Department to the Managing Director of BISCOMAUN, he issued a notice to the petitioner with regard to the enquiry report. The notice was served on the petitioner at Motihari as he was posted during the suspension and he was required to show cause on that very day at Patna. The petitioner did not respond. The Managing Director of the BISCOMAUN, thereafter, passed the impugned order dated 18.02.2014 dismissing the petitioner from the service. This order is under challenge in this writ petition.

Mr. Anand Kumar Ojha, learned counsel for the petitioner, submits that there are two situations that arise, either the petitioner was absorbed in the Transport Department and if that was so then the order passed by the Managing Director of BISCOMAUN was *void-ab-initio*. If he was not an employee of the Transport Department then the very initiation of the enquiry was void and in contravention of the Bihar CCA

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Rules, 2005, inasmuch as that is not applicable to BISCOMAUN and the Secretary, Transport Department had no authority. He could best have ended the deputation and sent the petitioner back. In either of the events, the proceedings and the punishment cannot be sustained.

Mr. Mandal, learned SC-3 submits that there is no dispute that the petitioner was an employee of the BISCOMAUN and as such when he was noticed by the Managing Director of the BISCOMAUN, he ought to have replied. The BISCOMAUN cannot lose disciplinary control over him.

Having heard both the sides, in my view, the writ petition has to be allowed and the order of the Managing Director, BISCOMAUN has to be set aside. The reason is that by virtue of the writ order passed in favour of the petitioner, the writ petitioner would be deemed to have been absorbed in the Transport Department with effect from the day when he was sent to the Transport Department to the BISCOMAUN in the year 1994. That judgment had attained finality. That being so, the disciplinary authority was the State through the Secretary, Department of Transport. It is he alone who could have passed the order and not the BISCOMAUN or the



Managing Director of the BISCOMAUN thereof. Once the petitioner was deemed to be absorbed in the Transport Department, BISCOMAUN lost the disciplinary control over the petitioner.

Accordingly, the writ petition is allowed. Needless to say, as the petitioner has superannuated in the year 2015, he would be entitled to remuneration and retiral dues in accordance with law.

(Navaniti Prasad Singh, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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