

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1943 of 2016
IN
Civil Writ Jurisdiction Case No. 1939 of 2016**

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1. The State of Bihar through the Secretary, Department of Cooperatives, Government of Bihar, Patna.
 2. The Registrar, Cooperative Societies, Bihar, Patna.
 3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.

.... Petitioner Nos. 1 to 3- Appellant/s

Versus

1. Bihar Human Rights Commission, 9 Bailey Road, Patna through its Secretary.
2. Dinesh Prasad Verma, s/o- Late Vidyapati Verma, r/o- mohalla Patangali, Sherganj, P.O.+ P.S.- Sasaram, District- Rohtas.
3. Champa Devi, w/o- Late Tribhuwan Singh, r/o- village Sihauta, P.O.- Maharajganj, District- Siwan.
4. Saraswati Devi, w/o- Late Nirdhan Rajak, r/o- Karpuri Chowk, P.O.+ P.S.+ District- Madhepura.
5. Shyama Nand Jha, son of not known to the appellants, retired Manager, Vidyapati Nagar, Ward No. 19, Saharsa.
6. Shiv Narayan Sah, son of not known to the appellants, retired PACS Manager, r/o- Jai Prakash Nagar, Ward No. 6, Bus Stand, Near Ice Factory, P.O.+ P.S.- Medhepura- 852113.
7. Md. Azizur Rahman, son of not known to the appellants, Cooperative Banking Society Ltd., Gandanibagh, Road No. 21, Patna.
8. Kameshwar Ram, son of not known to the appellants, Cooperative Banking Society Ltd., Gandanibagh, Road No. 21, Patna.
9. Sanjay Kumar, son of not known to the appellants, Cooperative Banking Society Ltd., Gandanibagh, Road No. 21, Patna.
10. Ganesh Mandal, son of not known to the appellants, Cooperative Banking Society Ltd., Gandanibagh, Road No. 21, Patna.

Respondent nos.1 to 10.. Respondents 1st Set.

11. Lal Babu Mishra, son of Late Sukh Sagar Mishra, resident of Kochor, P.S.- Kanhauli, District- Sitamarhi.

... Intervenor Respondent 2nd Set.



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Appearance :

For the Appellants : Mr. Dhirendra Kumar, AC to AAG-6
For the Respondent Nos.2 to 3 : Mr. Suraj Nr. Yadav, Advocate
For the Respondent Nos.7, 8, 9, 10 : Mr. Md. Imtiyaz Hussain, Advocate
For the Respondent No.11 : Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-05-2017

Re.: Interlocutory Application No.8147 of 2016

The delay of 53 days in filing of this Appeal is
condoned.

Interlocutory Application stands disposed of.

Re. : Letters Patent Appeal No.1943 of 2016

In an application by the respondents employees, who
were working with the Co-operative Societies registered under the
Bihar Cooperative Societies Act, it was their grievance that in
accordance to the judgment rendered by the Supreme Court in the
case of **State of Bihar & Ors. Vs. Bihar Rajya Sahkarita
Prabandhak Seva Sangh, Patna, & Ors.** [1999 (1) PLJR 35 (SC)],
the Co-operative Department is not paying them salary and their
cases for absorption are not being considered. Taking cognizance of



the aforesaid complaint, the State Human Rights Commission (for short, 'the Commission') issued the following directions to the State Government:

“This assertion of the Cooperative Department having been accepted by the Supreme Court means that all paid managers were to be given three chances to compete for getting a regular government job but a safeguard was created for those who would fail in all the three attempts. Such managers who could not get absorbed in accordance with the scheme approved by the Supreme Court had to be paid their salaries as they were being paid on August 20, 1998. The respondents did not dispute that on August 20, 1998 the Government was taking the burden of salary of the managers. An order to the contrary was issued subsequently. In view of these facts the Government is bound to pay salary to the petitioners in accordance with the undertaking given before the Supreme Court which became basis for the directions of the Supreme Court dated August 20, 1998. If the Government wanted to get an escape from this order, they had to approach the Supreme Court.

Since under directions Supreme Court government is bound to pay the salaries of petitioners and the Commission is bound by Article 144 of Constitution of India to see that orders of the Supreme Court are followed, the Commission directs payment of unpaid salary and other benefits within eight weeks.”

When the aforesaid order of the Commission was challenged by the State Government before the learned Writ Court,



the learned Writ Court dismissed the writ petition by holding that the Commission has only directed for implementing the order passed by the Supreme Court and, therefore, interference should not be made.

Even though, on a bare reading of the orders passed by the Commission and the learned Writ Court, it reflects that the Commission only directed the State Government to take action for implementing the judgment of the Supreme Court, but the question, legal in nature, that arises for consideration is as to whether the Commission can exercise such a jurisdiction and whether the direction issued falls within the four corners of the powers available to the Commission under Section 12 of the Protection of Human Rights Act, 1993. Section 12 of the Act empowers the Commission to go into the disputes of the nature as are indicated therein. Section 12 of the Act reads as under:-

12.Functions of the Commission.- The Commission shall perform all or any of the following functions, namely:-

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of-

(i) violation of human rights or abatement thereof;
or

(ii) negligence in the prevention of such violation,
by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;



(c) visit, under intimation to the State Government, any jail or any other institution under the control of the state Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights

(j) such other functions as it may consider necessary for the promotion of human rights.

The question of payment of salary for working in an appropriate Department or Cooperative Societies registered under the Bihar Cooperative Societies Act and the question of absorbing in service is not a dispute within the parameters of a dispute as contemplated within the jurisdiction of the Commission as detailed in Section 12 of the Act reproduced hereinabove. The dispute in



question with regard to payment of salary and absorption is a service dispute between an employer and an employee and it is beyond the purview of the jurisdiction available with the Commission. It is a service dispute which could be adjudicated by an appropriate Court or the statutory authority under the provisions of the Bihar Cooperative Societies Act and, in our considered view, even in the matter of directing for implementing the judgment of the Supreme Court, the Commission does not have the jurisdiction in respect of a service matter or dispute between an employer and employee and the learned Writ Court has lost sight of the aforesaid fact while dismissing the writ petition.

Accordingly, we allow this appeal, quash the order passed by the Commission dated 06.05.2015 in File Nos. BHRC/Comp. 1888/09, 2422/09, 3239/11, 771/11, 3316/10, 1237/12 and 3973/12 and grant liberty to the complainants or the employees herein, either to take recourse to the remedy available of approaching the statutory authority under the Bihar Cooperative Societies Act for redressal of their grievance or to file an appropriate writ petition under Article 226 of the Constitution, if permissible in law. In case, the service dispute is raised before the Registrar or the authorized officer under the Cooperative Societies Act, the statutory authority under the Act shall adjudicate the dispute raised by the



employees within a period of six months and decide the dispute in accordance the law after hearing all concerned.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil/-

AFR/NAFR	N.A.F.R
CAV DATE	N.A.
Uploading Date	17.05.2017
Transmission Date	

