

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.344 of 2012
Arising out of
Civil Writ Jurisdiction Case No. 12158 of 1999**

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1. The State Of Bihar
 2. The Commissioner-Cum-Secretary, Labour Employment And Training Department, Government Of Bihar, Patna
 3. The Director, Labour Employment And Training Department, Government Of Bihar, Patna
 4. The Secretary, Co-Operative Department, Government Of Bihar, Patna
 5. The Development Commissioner, Department Of Planning And Development, Government Of Bihar, Patna
 6. The Registrar, Co-Operative Societies, Co-Operative Department, Government Of Bihar, Patna
 7. Sec. Dept. of Labour Employment and Training, Govt. of Jharkhand, Ranchi
 8. Under Secretary, Department of Labour Employment and Training, Govt. of Jharkhand, Ranchi

..... Respondents/Appellants
Versus

1. Dhananjay Tiwary S/O Bhola Nath Tiwary R/O Mohalla- Ram Nagri, Sector-III, Near Ashiana Nagar, P.S.- Shastri Nagar, District- Patna
2. Kumar Arbind S/O Late Awani Bhushan Thakur R/O Mohalla- Shivpuri, P.S.- Shastri Nagar, District- Patna
3. Kanhaiya Kumar Singh S/O Late Chandrabans Narayan Singh R/O Mohalla-Tilak Nagar, P.S.-Begusarai, District- Begusarai
4. Kedar Nath Singh S/O Raghubir Singh R/O Village- Parasia, P.S.- Nakha, District- Rohtas

..... Petitioners/Respondents

5. The Administrator Bihar State Co-Operative Marketing Union, BISCOAUN Bhawan, West Lown, Patna

..... Respondent/Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate Mr. Amit Kr. Jha, Advocate
For the Respondent/s	:	Mr. Shasi Anugrah Narayan, Sr. Advocate Mr. Sanjeev Kumar, Advocate Ms. Priya Ranjan, Advocate Mr. Amit Kr. Singh, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**



Date: 18-07-2017

This is a reference made to us by a Division Bench of this Court on 11.9.2012 and while making the reference, the opinion expressed by the Division Bench which in fact is the reason for reference, reads as under:

“In our opinion, deputation is not a matter of right. No employee can claim a right to continue to serve on deputation. If the parent department recalls such person sent on deputation, unless the order is proved to be *mala fide*, Court cannot interfere with the same. The principle of “legitimate expectation” would not apply to such cases. A similar view has been taken by a Bench of the High Court of Jharkhand (**Coram:** Mr. Bhagwati Prasad, CJ and Mr. D.N. Patel, J) in the matter of *Arun Kumar Singh Vs. State of Jharkhand & Ors.* (L.P.A. No.243 of 2008, decided on 25th February 2011).

As we have expressed opinion contrary to the above referred binding precedent of a Bench of this Court, the matter requires to be referred to a larger Bench of three-Judges.

This Appeal is referred to the larger Bench of three-Judges.”

There is no quarrel or dispute with regard to the legal proposition expressed by the Division Bench in the order of reference with regard to the right accruing to an employee on deputation and the law with regard to deputation. However, in the matter of application of the “principle of legitimate expectation” in such cases, the question has been considered by a Division Bench of this Court as already indicated in the order in L.P.A. No.608 of 2006.



By a detailed order passed by the Division Bench on 19th of April, 2010, the issue of “legitimate expectation” has been decided, the learned referring Court only says that the principle of legitimate expectation would not apply in such a case. However, there is no indication in the order of reference as to why and in what respect the principles laid down in L.P.A. No.608 of 2006 is not correct or warrants re-consideration, nor is anything indicated to show that the principle laid down is contrary to any earlier judgment of this Court or the Judgment of the Hon’ble Supreme Court. Merely because the Division Bench thought that the principles of legitimate expectation would not be applicable, a reference could not be made as the judgment rendered by the Division Bench in the case of Arun Kumar Singh (supra) was binding on the Division Bench, , more so after the S.L.P. preferred by the State Government against the aforesaid judgment was also dismissed. The learned Division Bench seems to have referred the matter for re-consideration in the light of the principles laid down in the case of Arun Kumar Singh vs. State of Jharkhand, by a Division Bench of the Jharkhand High Court.

It seems that the Division Bench took this view because a Division Bench of the High Court of Jharkhand in L.P.A No.243 of 2008 (Arun Kumar Singh vs. State of Jharkhand) has taken a view that principles of legitimate expectation will not apply in the case of



deputation. However, we have gone through the judgment of the Jharkhand High Court in the case referred to hereinabove and we find that this is a two page judgment where, without referring to any principle of law, it is only stated that the question of legitimate expectation and promissory estoppel will not arise in a case of deputation.

There is not even a reference to the Judgment rendered by the Division Bench in L.P.A. No.608 of 2006 or the principles laid down therein. In the case of Arun Kumar Singh (supra) there is nothing to show that the learned Jharkhand High Court held that the principles of legitimate expectation will not apply in a case of deputation is after consideration of the Division Bench judgment of this Court in L.P.A. No.608 of 2006 and after its consideration a contrary view has been taken. In view of the fact that the judgment rendered in the case of Arun Kumar Singh (supra) by the Jharkhand High Court does not even refer to the principle laid down in L.P.A. No.608 of 2006 and, therefore, the judgment in the case of Arun Kumar Singh (supra) has to be held as *per incuriam* and cannot be made applicable in other cases. There is nothing available on record based on which it can be said that the principles laid down in the case of L.P.A. No.608 of 2006 warrants re-consideration.

That being so, we are of the considered view that once the



judgment rendered by the Jharkhand High Court in the case of Arun Kumar Singh (supra) is held to be *per incuriam* by us and there is nothing to indicate that the case of Jainath Tiwary & Anr. vs. The State of Bihar & Ors. (L.P.A. No.608 of 2006) warrants re-consideration, no question of law arises to be considered by this Bench. Accordingly, the matter is remanded back to the Division Bench for proceeding to consider the matter in accordance with law. Except for holding that the judgment rendered in the case of Arun Kumar Singh (supra) is *per incuriam*, for the reasons indicated hereinabove, we see no further indulgence to be made in the reference.

The reference accordingly stands disposed of.

Office to place the matter before the appropriate Bench in the next week.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	NA
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