IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16466 of 2014

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Narendra Singh, son of Late Yadu Nath Saran Singh, resident of Mohalla-Rajendra Nagar, Road No.1, P.S. Kadam Kuan, District Patna

.... Petitioner

Versus

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, Co-operative Department, Government of Bihar, Patna

4. The Bihar State Co-operative Marketing Union through its Administrator, Bihar, Patna

5. The Regional Development Authority, now repealed, presently Patna Municipal Corporation through its Municipal Commissioner, Bihar, Patna

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Kamal Nayan Choubey, Sr. Advocate
Mr. Vijay Bharti, Advocate
For the State : Mr. Sanjay Kumar, AC to GP 17
For the respondent (PMC): Mr. Ranjeet Kuamr Pandey, Advocate
For Respondent No.4 : Mr. Rakesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

9 31-07-2017 The petitioner prays for the following reliefs:

i) For issuance of writ in the nature of mandamus or any other appropriate writ commanding the respondents to absorb the services of the petitioner in Urban Development Department, Bihar, Patna in terms of the L.P.A. No.680 of 2006 (in which the petitioner has been impleaded as proforma respondent) which has been heard and allowed along with LPA No.608 of 2006 and analogous cases vide order dated 19.04.2010 (Annexure-10) and the same has been affirmed by Hon'ble Apex Court in S.L.P. No.372 of 2011, dated

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18.02.2011 (Annexure-13) pursuant thereto all other similar Engineers have been absorbed;

ii) For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

2. As the petitioner had earlier moved this Court, it would be necessary to notice the facts of the case. In the year 1986, the petitioner obtained Bachelor of Engineering Degree in Civil branch from BIT, Mesra, Ranchi. In 1987, he was appointed as Assistant Engineer in BISCOMAUN. The functioning of BISCOMAUN was regularly monitored by the State Government and on 16.12.1993 the Cooperative Department sent a detailed memorandum for abolition of Engineering wing of BISCOMAUN and absorption of its Engineers in different departments of State Government against vacant posts for approval of Economic Policy and Economic Coordination Committee of the Cabinet. Soon thereafter, the Government of Bihar constituted a high level committee for deciding the procedure for absorbing the Engineers working in the BISCOMAUN on permanent basis. In light of the decision of the high level committee, the Science and Technology Department decided to take the services of the Engineers of the BISCOMAUN on deputation basis but only after conducting screening and interview. In light of the decision of the Science and

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Technology Department, the petitioner too appeared before the Interview Board and was declared successful. Thereafter, the Department of Science and Technology Department vide notification, dated 13.12.1994 deputed the petitioner as Lecturer, Government Polytechnic, Muzaffarpur. The Administrator, BISCOMAUN vide notification, dated 13.12.1994 made over the services of the petitioner to the Science and Technology Department and accordingly he was relieved from BISCOMAUN. The BISCOMAUN also issued a letter of ”No Objection” stating that it has no objection if the Science and Technology Department permanently absorb the petitioner. The petitioner was initially deputed for a period of 3 years which expired on 19.12.1997. The petitioner and other similarly situated Engineers of BISCOMAUN who were on deputation represented before the Secretary, Science and Technology Department on 7.12.1997 for their permanent absorption. The department kept on extending the period of deputation of the petitioner and other for shorter duration. The Secretary, Cooperative Department once again vide letter No.2334, dated 6.7.1999 requested the entire concerned department, to absorb the services of employees of the BISCOMAUN who were posted on deputation in their respective department. Some of the departments initiated procedure for permanent absorption but no steps was taken by the Science and

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Technology Department. The last order extending the deputation of the petitioner and others came to an end on 31.12.1999. Under the aforesaid circumstances, the deputation of the petitioner was transferred to the Urban Development Department. Government of Bihar, Patna on 31.12.1999. The Departmental Establishment Committee vide its meeting, dated 6.1.2000 decided to post the petitioner in Patna Regional Development Authority where the petitioner continued till 4.8.2006. The Urban Development Department was reluctant to absorb the services of the petitioner despite policy of the State Government for final absorption as its parent organization (BISCOMAUN) has become defunct. The petitioner along with one Surendra Kumar preferred a writ petition bearing C.W.J.C. No.1899 of 2001 which was finally dismissed vide order, dated 26.7.2006 with analogous cases. As a consequence, the services of the petitioner along with others were sent back to BISCOMAUN vide letter, dated 4.8.2006 (Annexure-11).

3. A Letters Patent Appeal bearing L.P.A. No.680 of 2006 was filed by the co-petitioner Surendra Kumar in which the petitioner was also made a proforma respondent and the same was allowed by the Division Bench of this Court along with other analogous appeals vide order, dated 19.4.2010 (Annexure-10). As the wife of the petitioner was suffering from serious ailment and

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was being treated at Mumbai till 2010, he filed an appeal bearing L.P.A. No.1658 of 2010 which was dismissed vide order, dated 16.11.2010 (Annexure-12) on the point of limitation itself without going into the merit of the case.

4. In the meantime, the State of Bihar preferred Special Leave to Appeal bearing S.L.P. (Civil) No.372 of 2011 against the order, dated 19.4.2010 passed in L.P.A. No.680 of 2006, which was dismissed vide order dated 18.3.2011 (Annexure-13) and the order of this Court passed in L.P.A. No.680 of 2006 and other analogous cases was affirmed.

5. The petitioner has renewed his prayer on the ground that his case is squarely covered by the order, dated 19.4.2010 passed by the Division Bench of this Court in L.P.A. No.680 of 2006 and the order, dated 18.3.2011 passed by the Hon'ble Apex Court in S.L.P. (Civil) No.372 of 2011. He submits that services of all similar situated Engineers of BISCOMAUN have been absorbed in the Urban Development Department of the State Government vide memo No.1724, dated 22.5.2012 and memo No.206, dated 23.8.2013 and the case of the petitioner has been overlooked. He further submits that this Court again vide order, dated 29.1.2013 passed in C.W.J.C. 1615 of 2006 (Prabhuwan Roy & anr vs State of Bihar & Ors) after taking into consideration a large number of similar cases, including L.P.A. No.608 OF 2006 and other

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analogous cases as well as order of Hon'ble Apex Court directed that the case of the writ petitioners is also fit to be disposed of in the same term and with similar directions as has been done in L.P.A. No.608 of 2006 and other analogous cases. It would be apt to quote the relevant direction contained in paragraph 24 of the judgment and order dated 19th April, 2010 passed in L.P.A. No.608 of 2006 for easy reference:

> *"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*

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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."

6. Counsel for the respondents opposed the writ petition. He submits that the petitioner preferred L.P.A. No.1658 of 2010 against the order, dated 26.7.2006 passed in C.W.J.C. No.1899 of 2001 which was dismissed by the Division Bench of this Court vide order dated 16.11.2010 on the point of limitation. The petitioner did not move the Hon'ble Apex Court against the order of the Division Bench dismissing his L.P.A. on the point of limitation.

7. On perusal of the records, I find that one Surendra Kumar was also a writ petitioner along with the present petitioner in C.W.J.C. No.1899 of 2001, which was dismissed vide order dated 26.7.2006. However, Surendra Kumar preferred an appeal bearing L.P.A. No.680 of 2006, in which the petitioner was proforma

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respondent, which was allowed along with other analogous appeals vide order, dated 19.4.2010. It is true that the appeal of the petitioner was dismissed but it was dismissed on account of limitation and not on merit. Thereafter also, the cases of similarly situated Engineers were also allowed vide order, dated 29.1.2013 passed in C.W.J.C. No.1615 of 2006. The State Government, in view of the order of the Hon'ble Apex Court, too came out with the general order absorbing the Engineers and some other employees of BISCOMAUN vide memo No.1724, dated 22.5.2012 and memo No.2068, dated 23.8.2013.

8. This in my considered opinion, as other employees and similarly situated Engineers like the petitioner have been absorbed, the respondents are directed to absorb the petitioner in light of order passed in C.W.J.C. No.1615 of 2006, dated 29.01.2013 relying upon paragraph 24 of the judgment and order, dated 19th April, 2010 passed in L.P.A. No.608 of 2006 and other analogous cases.

9. This writ application is, accordingly, disposed of.

(Samarendra Pratap Singh, J)

Md. Jamaluddin Khan

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