

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.314 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 14598 of 2014**

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Subhendra Jha, son of Late Umapati Jha resident of village Hanuman Nagar, P.O. Bhaur, P.S. Pandaul, District - Madhubani.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Chairman, BISCOMAUN, Biscomaun Bhawan, West Gandhi Maidan Marg, Patna.
3. The Managing Director, BISCOMAUN, Biscomaun Bhawan, West Gandhi Maidan Marg, Patna.
4. The Administrator, BISCOMAUN, Biscomaun Bhawan, West Gandhi Maidan Marg, Patna.
5. The Board of Directors, BISCOMAUN, Biscomaun Bhawan, West Gandhi Maidan Marg, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. Anju Mishra, Advocate

For the Respondent/s : Mr. Durgesh Nandan, AAG-14

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 18-01-2017

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench on 10th of February, 2015 in C.W.J.C. No.14598 of 2014 whereby, the writ application filed by the appellant claiming back wages from the date of suspension to the date of reinstatement i.e. from 5th June, 1987 to 28th of February, 2001, as well as to pay back an amount of Rs.78,000/- towards excess deductions made against the recovery of



advance payment made to him.

2. The writ petition has been dismissed by the learned Single Bench on the ground that the writ petition is not maintainable before this Court in terms of Special Bench judgment of this Court in *Organizer, Dehri C.D. & C.M. Union Limited* {2014 (1) PLJR 695}. It was also held that none of the learned counsel for the petitioners suggested that any of the order or action challenged in these set of writ petitions involve the Administrator appointed to manage the affairs of the BISCOMAUN. The learned Single Bench returned the following finding:

“14. As a matter of fact, when the petitioners accept that BISCOMAUN is not under supersession and the action was/or do not involve the Administrator appointed by the State Government in BISCOMAUN, their reliance on the judgment of *Devendra Kumar (Supra)* is obviously misplaced. For the same reason the reliance placed on the Division Bench judgment in the case of *Mahesh Prasad (supra)* is also wholly misplaced as would be clear from the reading of paragraph no.6, wherein, the question of maintainability of the writ petition was gone into even without making reference to the Full Bench judgment in the case of *Rajendra Prasad Sah (supra)*. Such view of the Division Bench therefore, cannot bind this Court in the light of the law laid down by the Full Bench in the case of *Rajendra Prasad Sah (supra)* and the Five Judges Special Bench in the case of *Organizer, Dehri C.D. & C.M. Union Limited (supra)*.”

3. Before this Court, in the present Letters Patent



Appeal, learned counsel for the appellant pointed out that, in fact, the services of the appellant were dismissed on 11th of July, 1989. The order of dismissal was challenged by him before a Civil Court in a suit which suit was allowed *ex parte* on 19th of September, 1991. Aggrieved against the said *ex parte* decree, firstly an application for setting aside *ex parte* decree was passed, which was dismissed. An appeal was filed by the BISCOMAUN against the *ex parte* decree which was dismissed on 21st of May, 1996. It is thereafter, the appellant has been reinstated.

4. The short question is whether the writ application under Article 226 of the Constitution of India is maintainable before this Court. The Special Bench decision of five Judges in Organizer, Dehri C.D. & C.M. Union Limited (supra) has held that BISCOMAUN is not a 'State' and that writ application is not maintainable. It is only when action is or has been taken by the Administrator when the BISCOMAUN stand superceded, a writ application would be maintainable.

5. The subsisting grievance of the appellant is regarding claim of Rs.78,000/- which was said to be illegally deducted against the recovery of advance payment given to him. There is no assertion in the writ application that the amount was deducted when an Administrator was appointed for managing the



affairs of the BISCOMAUN. There is a categorical finding returned by the learned Single Bench that there is no assertion on behalf of the present appellant as well as other writ applicants that BISCOMAUN was superseded and an Administrator appointed.

6. In view of the larger Bench decision in Organizer, Dehri C.D. & C.M. Union Limited (supra), we do not find that the present Letters Patent Appeal merits any consideration. The present Letters Patent Appeal is accordingly dismissed.

7. However, it will be open for the appellant to avail the remedy as may be available to him in accordance with law.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

K.C.jha/-

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