

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2369 of 1998

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1. Ram Kishor Singh "Arbind" son of Sri Nand Kishore Singh, resident of village Nimi, P.O., Mahuari, Police Station Sonhan (Bhabhua) District-Kaimur.
 2. Bijay Kumar Thakur son of Sri Jadubanshi Thakur, resident of at/P.O. Bhith Bhagwanpur, Police Station via –Madhepur, District Madhubani
 3. Sudarshan Singh son of Sri Hawaldar Singh, resident of village Araila, P.O. Manudihari, Police Station Jagdishpur, District Bhojpur.
 4. Chandra Shekhar Singh son of Sri Chandra Mohan Singh, resident of village Garhi Kurma, P.O. Chatma Dih, Police Station Shambhuganj, District Banka (Bhagalpur)
 5. Kameshwar Prasad Singh no. 2 son of Sri Ram Byas Singh, resident of village and P.O. Sheopur, Police Station Bikramganj, District Rohtas (Sasaram).

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Labour Employment and Training, Government of Bihar, Patna
3. The Commissioner, Department of Labour, Employment and Training, Government of Bihar, Patna
4. The Director, Employment and Training, Department of Labour, Employment and Training, Government of Bihar, Patna
5. The Special Secretary, Department of Labour, Employment and Training, Government of Bihar, Patna
6. The Under Secretary, Department of Labour, Employment and Training, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shio Narayan Singh, Adv.
Mr. Suresh Prasad Baranwal, Adv.
Mr. Bir Bahadur Singh, Adv.
Mr. Arun Kumar Singh No.4, Adv.
Mr. Sanjay Kumar Singh No.1, Adv.
Mr. Sunil Kumar Singh, Adv.

For the Respondent/s : Mr. Gyan Shankar, A.C. to G.P.2
Mr. N.N.Ojha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-02-2018

None appears on behalf of the petitioners. Mr. Gyan Shankar,
A.C. to G.P.2 appears for the State of Bihar and Mr. N.N. Ojha



learned counsel appears for the State of Jharkhand.

I have heard learned counsel for the State of Bihar and Mr. Ojha for the State of Jharkhand and I have perused the records and in the circumstances reflecting I am persuaded to dispose of the matter on the basis of the submissions advanced by learned counsel for the respondents as well as the materials on record.

The writ petition was filed by these petitioners praying inter alia, for a direction to the respondents to post them as Principal, Industrial Training Institute (I.T.I. for the sake of brevity) on the basis of recommendation made by the Establishment Committee of the Labour, Employment and Training Department, Government of Bihar, on the basis of their deputation in the different departments of the State Government. The State of Bihar at the relevant time comprised of the unified state which included the territory which now forms part of State of Jharkhand under the Bihar Reorganization Act, 2000.

These petitioners are employees of the Bihar State Cooperative and Marketing Union (BISCOMAUN for the sake of brevity). The writ petition was admitted for hearing vide order passed on 26.3.1999. While the writ petition was pending hearing that an order bearing Memo No.533 dated 7.12.1999 was issued by the State Government in its Labour, Employment and Training Department, repatriating these petitioners to their parent organization, a copy of which was



brought on record vide Annexure-19 to I.A.No.12867 of 1999 with a prayer for stay of the same. I.A. No. 12867 of 1999 was considered by a coordinate bench and vide order on 23.12.1999 the operation of the repatriation order was stayed. Although the matter was again considered on 03.02.2000 and on subsequent dates but the interim order so passed was not interfered with.

The writ petition came up for hearing before a coordinate bench of this Court on 13.12.2011 and on non appearance of the petitioners, the writ petition was dismissed for non prosecution and the order of stay was vacated only to be restored by a subsequent order passed on 14.3.2012. The matter was thereafter taken up on 28.03.2014 when learned counsel for the parties informed that the issue raised in the present writ petition is a subject matter of L. P.A.No.344 of 2012. A coordinate bench taking note of the submissions directed to place the matter for consideration on disposal of L.P.A.No.344 of 2012.

L.P.A. No. 344 of 2012 (State of Bihar and Ors. vs. Dhananjay Tiwari and Ors.) was filed on behalf of the State and its Officers feeling aggrieved by the judgment and order of the writ Court whereby the writ petition was allowed and the order of repatriation bearing memo No. 533 dated 07.12.1999 was quashed. The Division Bench taking note of the judgment and order passed by another Division Bench in **L.P.A. No. 608 of 2006 (Avinash Vatsyayan**



versus State of Bihar and Ors.) and analogous cases, dismissed the appeal of the State vide judgment and order passed on 16.8.2017.

The judgment and order passed by the Division Bench in the case of **Avinash Vatsyayan** (supra) dated 19.4.2010 is on record at Annexure-1 to I.A.No.236 of 2013 at running page 186 of the present proceedings and the Division Bench taking note of the identical grievance raised by the appellants of the said case against the order of repatriation, allowed the appeals which were heard analogous except, L.P.A. No. 1110 of 2004. The order of repatriation was quashed and the authorities were directed to treat the appellants not on simple deputation but one under a policy of the State Government for the purpose of rehabilitation or absorption. L.P.A. No. 1110 of 2004 was dismissed because none appeared to press the appeal. The fact which gains relevance is that the relief was granted to those who had been sent on deputation prior to the cut of date noticed by the Division Bench i.e 16.11.1999. Such is the position settled in paragraphs 24 and 25 of the judgment which is reproduced herein below:

When L.P.A. No. 344 of 2012 came up for consideration before the Division Bench filed by the State of Bihar feeling aggrieved by the judgment and order of the Single Judge in allowing the writ petition and quashing the repatriation order bearing Memo No.533 dated 7.12.1999, the Division Bench after noting the Division



Bench judgment of this Court rendered in the case of **Avinash Vatsyayan** (supra) which was delivered on 19.4.2010, also noticed the opinion expressed by the Division Bench of the Jharkhand High Court in a case arising from **L.P.A.No.243 of 2004 (Arun Kumar Singh versus State of Jharkhand)** which was decided subsequently on 25.02.2011. The Division Bench of the High Court of Jharkhand while considering a similar plea had upheld the repatriation order while holding that the principles of legitimate expectation does not apply to a deputationist. The division bench considering the contest in the light of the opinion expressed by the Division Bench of the Jharkhand High Court in the case of **Arun Kumar Singh** (supra) arising from L.P.A. No. 243 of 2008 which was in conflict with the opinion expressed by the Division Bench of this Court in the case of **Avinash Vatsyayan** (supra) arising from L.P.A. No. 608 of 2006, referred L.P.A. No. 344 of 2012 to the larger bench for an authoritative pronouncement thereon.

The matter was considered by a Full Bench of this Court and the judgment and order of the Full Bench on such reference is placed on record at Annexure 6A of I.A. No. 8411 of 2017 at running page 327. The Full Bench has held the opinion of the Jharkhand High Court in the case of **Arun Kumar Singh** (supra) *per incuriam* because the division bench of the Jharkhand High Court failed to take



note of the legal position settled by the Division Bench of this court in the case of **Avinash Vatsyayan** (supra) which was passed much prior to the judgment of the Jharkhand High Court. The Full Bench of this Court upholding the legal position settled by the Division Bench in case of Avinash Vatsyayan arising from L.P.A. No. 608 of 2006 and after declaring the opinion of the Jharkhand High Court in L.P.A. No. 243 of 2008 *per incuriam*, remitted the matter to the Division Bench for disposal of the matter.

The judgment and order of the Division Bench on remand is enclosed at Annexure-6 to the proceedings at running page 323 and the Division Bench taking note of the legal position settled by the Division Bench in **L.P.A. No. 608 of 2006 (Avinash Vatsyayan Vs. State)** has dismissed the appeal. In other words, the grievance raised by the petitioners in this writ petition as against their repatriation has been upheld and the order of a repatriation bearing memo No. 533 dated 7.12.1999, which has also been impugned in the present proceedings vide Annexure-19 to I.A. No. 12867 of 1999, has been quashed.

In view of the legal position so settled in the two Division Bench judgments of this Court passed in L.P.A. No. 608 of 2006 which was followed by the Division Bench while dismissing L.P.A. No. 344 of 2012, this writ petition has to be allowed on the same



terms and consequently the repatriation order bearing Memo No. 533 dated 7.12.1999 in so far as it concerns the petitioner, is quashed. The writ petition is allowed. However, in the circumstances discussed, there shall be no order as to costs.

(Jyoti Saran, J.)

Bibhash

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	07.03.2018
Transmission Date	NA

