

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4712 of 1998

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Md. Mohibullah, S/o Md. Moinuddin, R/o Village-Daulatpur, P.S.-Mofassil
Ara, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
3. The Deputy Secretary, Art, Culture and Youth Department, Government of Bihar, Patna.
4. Bihar State Sports Authority, Moinul Haque Stadium, Rajendra Nagar, Patna (hereinafter referred to as the "Sports Authority"), through its Secretary.
5. The Director General of the Sports Authority, Moinul Haque Stadium, Rajendra Nagar, Patna.
6. The Secretary of the Sports Authority, Moinul Haque Stadium, Rajendra Nagar, Patna.
7. Bihar Ceramics Ltd through Managing Director, East Boring Canal Road, Patna-1.

... .. Respondent/s

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Appearance :

For the Petitioner/s :Mr. Alok Kr. Sinha, Sr. Adv.
For the Respondent Nos. 2 - 6 :Mr. Jainendra Kr. Sinha, A.C. to S.C.-7

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 26-11-2018

Heard Mr. Alok Kumar Sinha, learned Senior
Advocate for the petitioner and Mr. Jainendra Kumar Sinha,
learned Assistant Counsel to Standing Counsel No. 7 for the
respondent Nos. 2 to 6.

2. The petitioner has prayed for a direction for
setting-aside of the office order No. 205 dated 29.04.1998,
whereby the respondent/Sports Authority has directed him to



withdraw his salary in the old scale as well as for quashing of the order dated 19.05.1998, contained in memo No. 196, whereby a decision has been taken to recover the excess amount which has been received by him by way of salary as well as for his repatriation in the parent department, *i.e.*, Bihar Ceramics Ltd., a Non-Government Organization.

3. The records reveal that the petitioner went on deputation to the Sports Authority from Bihar Ceramics Ltd.

4. It is that stand of the State (respondent Nos. 4 to 6) that Bihar Ceramics Ltd. is not an undertaking of the State of Bihar. It is not even a subsidiary of Bihar State Pharmaceutical and Chemical Development Corporation, Patna. The deputation of the petitioner in the Sports Authority was on a mistaken notion that he had been working in a Government Organization.

5. It further appears that no advertisement was published regarding any vacant post of Assistant Account Officer in the Bihar State Sports Authority. In that view of the matter, the deputation of the petitioner in the Sports Authority was absolutely unjustified and de-hors any rules in



that regard. In fact, it was only on 31.12.1996, while audit was being done, that it was detected that the petitioner has wrongly been brought on deputation in the Bihar State Sports Authority.

6. It is without dispute that the petitioner never was a Gazetted Officer and the deputation/appointment of a Gazetted Officer is only done by the Governor of Bihar under the recommendation of Bihar Public Service Commission.

7. During the audit, it was also found that the petitioner had never performed the work of an Accounts Officer, but had only discharged the duties as a Cashier.

8. It is very surprising that the Bihar Ceramics Ltd., a private body, re-fixed the pay of the petitioner and the same was followed by a State Organization.

9. It appears that on an application having been made by the petitioner to the Directorate General of Bihar State Sports Authority for the post of Account Officer in the Scale of Rs. 1,000 – 1820 on 18.06.1987, which was forwarded to him by one person claiming himself to be the Executive Director of Bihar Ceramics Industries, the



petitioner was inducted in the Sports Authority by way of deputation. This was under a mistaken notion that the petitioner is an employee of a Government undertaking.

10. There is no record of any consent by the Bihar State Pharmaceutical and Chemical Envelopment Corporation. In fact, even there is no record of the petitioner having been relieved from the Bihar Ceramics Ltd. to join the Bihar State Sports Authority.

11. It appears that at some stage, the Officers of the Government closed their eyes and allowed things to happen as it were at the instance of the petitioner and others who were hand-in-gloves with him.

12. The issue regarding the deputation of the petitioner in the Sports Authority was raked up by the Vice-Chairperson of the Bihar State Sport Authority, who strongly objected to the deputation and grant of revised pay-scale to the petitioner. It was at his instance that a direction was issued for relieving the petitioner from the Sports Authority and also for recovering of excess payment which was made to him.



13. This Court is at a loss to understand as to how, the petitioner who was an employee of a private organization getting a basic salary of Rs. 1,000/- could be deputed in a Government Organization without observance of any rule or taking of No Objection Certificate from Bihar State Pharmaceutical and Chemical Development Corporation, Patna. The acceptance of the revised pay-scale at the instance of Bihar Ceramic Ltd. by the Officers of the Sports Authority is also intriguing. The approval of the Sports Authority of the revised pay fixation and the scale to be given to the petitioner was absolutely incorrect and it was only when an annual increment was given to him, that the matter saw the light of the day. A debate was also conducted in the Vidhan Sabha, whereafter necessary orders were passed relieving the petitioner from the Bihar State Sports Authority and repatriating him to Bihar Ceramics Ltd.

14. This Court, therefore, finds no reason to allow the prayers made by the petitioner.

15. It is, however, made clear that since the petitioner has worked with the Bihar State Sports Authority



and had discharged his duties as a Cashier, any recovery which shall be made from him would be the excess amount which he has received under a mistaken notion that he has served as an Assistant Accounts Officer.

16. The petition is, accordingly, dismissed with the above-noted observation.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
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