

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.947 of 2017
IN
Civil Writ Jurisdiction Case No. 3914 of 2016

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1. Bihar State Beverage Corporation Ltd.,
through its Managing Director, Vidyut Bhawan,
1st Floor, Jawaharlal Nehru Marg, Patna 1

2. The Managing Director, Bihar State Beverage
Corporation, Vidyut Bhawan, 1st Floor,
Jawaharlal Nehru Marg, Patna 1.

3. General Manager Human Resource and
Administrative, Bihar State Beverage
Corporation, Vidyut Bhawan, 1st Floor,
Jawaharlal Nehru Marg, Patna 1.

..... Appellant/s
Versus

1. Pratyush Kiran Son of Sri Ishwar Prasad Singh
resident of South of Maurya Class Industry,
Anand Vihar Colony, P.O. Bahadurpur, Housing
Colony, P.S. Agamkuan, District - Patna

..... Respondent/s

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Appearance :

For the Appellant/s :Mr. Lalit Kishore, Sr. Advocate
:Mr. Vikas Kumar, Advocate
For the Respondent/s :Mr. Bipin Bihari Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-10-2018

1. Admit.
2. Shri Bipin Bihari Singh, learned
counsel, waives service of notice of admission
on behalf of the original writ petitioner.
3. In the facts and circumstances of the
case and with the consent of the learned



counsel appearing on behalf of the respective parties, we have heard learned counsel appearing on behalf of the respective parties at length finally.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 04.04.2017 passed in C.W.J.C. No. 3914 of 2016, by which the learned Single Judge has allowed the said petition preferred by the original writ petitioner-private respondent No.1, herein, the original respondent No.1-Bihar State Beverage Corporation Limited has preferred the present Letters Patent Appeal under Clause 10 of the Letters Patent.

5. The facts leading to the present Letters Patent Appeal, in nutshell, are as under:

5.1. That respondent No.1, herein, original writ petitioner was as such the employee of Industrial Co-operative Federation. He along with others were sent on deputation to the Bihar State Beverage Corporation Ltd. (hereinafter referred to as the 'Corporation'). The Board of Directors of the appellant-Corporation in their 51st Meeting held on 21.12.2015 at Agenda No. 51-11 took a decision to repatriate the original writ petitioner and 14 other employees of the Industrial Co-operative Federation on the



ground that all of them were not regular employees of the Industrial Co-operative Federation (parent employer).

5.2. Feeling aggrieved and dissatisfied with the aforesaid decision of the repatriation, the respondent No.1, herein, - original writ petitioner approached this Court by way of C.W.J.C. No. 3914 of 2016.

2.3. Having found that the original writ petitioner was as such, appointed on regular basis and was validly appointed employee of the Federation, the reason for repatriation was not tenable and therefore, by the impugned order, the learned Single Judge has quashed and set aside the order of the appellant-corporation repatriating the original writ petitioner and has directed the Corporation to consider the case of the original writ petitioner for continuation in the Corporation.

5.3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the original respondent No.1- Corporation has preferred the Letters Patent Appeal.

6. Sri Lalit Kishore, learned Senior Advocate has appeared on behalf of the appellant-Corporation and Sri Bipin Bihari Sinha, learned Advocate has appeared on behalf respondent No.1-original writ petitioner.



6.2. Sri Lalit Kishore, learned Senior counsel appearing on behalf of the appellant-Corporation has vehemently submitted that the learned Single Judge has materially erred in quashing and setting aside the order passed by the appellant-Corporation repatriating the original writ petitioner.

6.3. Sri Lalit Kishore, learned Senior counsel appearing on behalf of the appellant-Corporation has further submitted that in view of the subsequent development as the prohibition enforced in the State, it has been decided to repatriate number of employees to their parent department. It is submitted that the aforesaid has not been considered by the learned Single Judge.

6.4. It is further submitted by Sri Lalit Kishore, learned Senior counsel appearing on behalf of the appellant-Corporation that even otherwise, being on deputation to the Corporation and being the employee of the Industrial Co-operative Federation, the original writ petitioner has no right to continue on deputation with the appellant-Corporation. It is further submitted that therefore, the impugned judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

6.5. Making above submission, it is requested to allow the present Letters Patent



Appeal.

7. Sri Bipin Bihari Sinha, learned counsel appearing on behalf of the original writ petitioner tried to support the impugned judgment and order passed by the learned Single Judge. However, he is not in a position to satisfy the Court that the original writ petitioner being on deputation with the Corporation, has right to continue on deputation with the appellant-Corporation. However, it is further submitted that even the Industrial Co-operative Federation-parent Department is at the verge of closure and is likely to be wound up and therefore, sending the original writ petitioner to the parent Department would tantamount to termination of his services.

8. Heard learned counsel appearing on behalf of the respective parties at length.

8.1. At the outset, it is required to be noted that the original writ petitioner was the employee of the Industrial Co-operative Federation. He was sent on deputation to the appellant-Corporation. Being on deputation, he has no right to continue on deputation with the appellant-Corporation. Even learned counsel appearing on behalf of the original writ petitioner is not in a position to satisfy the Court on whether the original writ petitioner being on deputation with the



appellant-Corporation has a right to continue on deputation. As observed in hereinabove, his parent Department/employer is the Industrial Co-operative Federation. Even in the order of deputation, it has been specifically mentioned that he does not have a right to continue with the appellant-Corporation and he can be repatriated to the parent Department/Industrial Co-operative Federation at any time. Under the circumstances, the learned Single Judge ought not to have quashed and set aside the order of repatriation of the original writ petitioner to his parent employer-Industrial Co-operative Federation.

9. Now, so far as submission on behalf of the original writ petitioner that if the original writ petitioner is sent to his parent Department/employer, in that case, the same would tantamount to termination, as the Industrial Co-operative Federation is facing winding up proceedings is concerned, on the aforesaid ground, the original writ petitioner cannot be continued as deputationist with the appellant-Corporation. If the original writ petitioner would not have been sent on deputation to the appellant-Corporation, he would have faced the same problem with other employees of the Industrial Co-operative Federation. Merely because he was sent on deputation to the appellant-Corporation, on



the aforesaid ground, he cannot be continued on deputation with the appellant-Corporation. On his repatriation, his position with the parent employer would be continued as if he was not sent on deputation.

10. In view of the above and for the reasons stated above, the impugned judgment and order passed by the learned Single Judge quashing and setting aside the order of repatriation of the original writ petitioner passed by the appellant-Corporation deserves to be quashed and set aside and is, hereby, quashed and set aside. The order passed by the appellant-Corporation repatriating the original writ petitioner to his present employer-Industrial Co-operative Federation stands restored. The present Letters Patent Appeal stands allowed accordingly. No cost.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
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