

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.393 of 2019**

**In**  
**Letters Patent Appeal No.344 of 2012**

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Kumar Arvind, Son of Late Awani Bhushan Thakur, R/O Mohalla- Shivpuri,  
P.O. and P.S.- Shastrinagar, District- Patna. ... .. Petitioner  
Versus

1. THE STATE OF BIHAR
2. Deepak Kumar Singh, the Commissioner-cum-Secretary, Department of Labour, Employment and Training Government of Bihar, Patna.
3. Dharmendra Kumar Singh the Director, Labour Employment and Training Department, Government of Bihar, Patna.
4. Atul Prasad, the Secretary, Co-operative Department, Government of Bihar, Patna.
5. Subhash Sharma, the Development Commissioner, Department of Planning and Development, Government of Bihar, Patna.
6. Rachna Patil, the Registrar, Co-operative Societies, Co-operative Department, Government of Bihar, Patna.

... .. Opposite Parties

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**Appearance :**

For the Petitioner/s : Mrs. Nivedita Nirvikar, Advcoate  
Mr. Dharmendra Kumar Paswan, Advocate  
For the Opposite Party/s : Mr. Prajit Saurav, AC to AAG 10

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

6      24-07-2019                      This application has been filed for initiation of a proceeding for contempt against the opposite parties no. 2 to 6 who are the officers of the State of Bihar.

It is alleged that they have willfully and deliberately violated our order dated 16.08.2017 passed in L.P.A. No. 344 of 2012 by which while affirming the judgment of the learned Single Judge vide his order dated 28.04.2011 in C.W.J.C. No. 12158 of 1999, this Court has recorded in the concluding part of it's



judgment is as follows:

“There could have been occasion for granting such indulgence or consideration on the issue on the aspect as to what is the status of a deputationist and whether he gets a right even for absorption etc. But those debates or arguments will remain academic now in view of a well considered decision rendered by another Division Bench in identical circumstances where a batch of cases came to be considered. The leading case being LPA No.608 of 2006 and decided on 19.4.2010. The Court keeping in mind the circumstances under which the deputation was ordered, the prolonged working of such deputationists under the State of Bihar in different department sand to ensure the equality of treatment to such employees, in the special facts and circumstances directed absorption. The effort made by the State of Bihar to assail the decision of the Division Bench before the Hon’ble Apex Court also did not succeed and, therefore, in the given facts under which the employees of Biscomaun came to be deputed under the State in different departments and their prolonged association and work, did create a situation where their absorption under the State was the need of the hour. Keeping the above facts as well as the observation of the Full Bench read with Division Bench decision in Avinash Vatsyayan (LPA No.608 of 2006), the decision of the learned Single Judge in the above development in facts and law cannot be declared to be bad in law. The appeal has not merit. It is dismissed.”

A show cause has been filed in this case on behalf of opposite party no. 4. It is submitted therein that the petitioner was an employee of BISCOMAUN who retired on 30.06.2013. He is claiming absorption in Labour Department on the ground that he



had worked for a longer period in the Labour Employment and Training Department on deputation basis. He has further claimed that many other similarly situated persons have been absorbed in their respective department and as such the petitioner is also entitled to be absorbed. According to Opposite Party no. 4, the BISCOMAUN is not a defunct organization and the employees who are performing duty in this organization are receiving salary regularly. One Avinash Vatsyayan whose case is similar to the petitioner had filed a writ petition for absorption in the government department but the writ petition was dismissed by both the High Court at Patna and Jharkhand at Ranchi. Thereafter, he preferred Letters Patent Appeal in the Hon'ble High Court at Patna which was allowed and the respondents were directed to take follow up action for absorption but the State of Jharkhand instead of complying the order filed a Special Leave Petition before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court set aside the judgment dated 19.04.2010 passed by the Hon'ble Division Bench of this Court in C.W.J.C. No. 608 of 2006. The judgment of the Hon'ble Supreme Court is dated 03.02.2015 in Civil Appeal No. 1442 of 2015.

It is in this view of the Hon'ble Supreme Court that the petitioner was repatriated in his parent organization BISCOMAUN at Patna and he was working as Assistant Engineer in



BISCOMAUN therefore, the claim of the petitioner for absorption in the Government Department is not tenable.

A plea has been raised that in the given facts and circumstances, in view of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 1442 of 2015, the judgment dated 16.08.2017 passed in L.P.A. No. 344 of 2012 of which contempt has been alleged is not enforceable hence, it is not a case of deliberate, intentional and willful disobedience of the orders passed by this Court.

We have considered the materials available on the record. It is apparent from a bare reading of the judgment dated 16.08.2017 of which contempt has been alleged that in course of hearing of the said Letters Patent Appeal the judgment of the Hon'ble Supreme Court in Civil Appeal No. 1442 of 2015 was not brought to the notice of this Court. The Court proceeded to dismiss the Letters Patent Appeal relying upon the judgment of this Court in the case of Avinash Vatsyayan and others. After going through the judgment of the Hon'ble Division Bench we find that the Hon'ble Supreme Court had occasion to examine the Division bench judgment of this Court in L.P.A. No. 608 of 2006 and after examining the materials on the record, the Hon'ble Supreme Court in paragraph 17 and 18 of its judgment held as follows:

“17. There is nothing on the record to suggest that approval was granted by the Co-ordinate Committee of



the Economic Policy of the Cabinet. It is also not in dispute that the aforesaid matter was not placed before the Cabinet nor any approval was taken or any scheme notified by the State of Bihar (by the order of the Governor of the State of Bihar) for absorption of employees of BISCOMAUN in the services of the State of Bihar. Therefore, in the present circumstances, we are of the view that in absence of any policy decision of the State Government or scheme framed for absorption of the employees of the BISCOMAUN in the services of the State of Bihar, the order of deputation of Arun Kumar Singh and Avinash Vatsyayan and others cannot be termed to be an appointment in the services of the State of Bihar and is to be simply treated as deputation with another organization. There being no statutory provision with respect to deputation, if the employees were asked to revert back to their original organization, it cannot be said that any illegality had been committed or that they were assured at the time of recruitment that they would continue in the services of the State.

18. In view of the above findings, we uphold the judgment and order dated 25.02.2011 passed by the High Court of Jharkhand at Ranchi in Letters patent Appeal No. 243 of 2008 and set aside the impugned judgment dated 19.04.2010 passed in Letters patent Appeal No. 608 of 2006 etc. in so far as it relates to Arun Kumar Singh and Avinash Vatsyayan and others.”

In the given facts and circumstances of the case we are of the considered opinion that once the very basis of our Division Bench judgment vanished by virtue of the decision of the Hon’ble Supreme Court, the judgment dated 16.08.2017 passed in L.P.A. No. 344 of 2012 cannot be enforced. We find no reason to proceed



with the contempt application.

We are conscious that some connected proceeding being Civil Review No. 434 of 2017 is pending perhaps with some defects. We are presently not concerned with those proceedings and in our opinion, in this contempt matter we need not go behind any other issue. We have already considered and expressed our views hereinabove.

The contempt application is thus, disposed of in terms stated hereinabove leaving it open for the petitioners to seek their remedies if any, as may be advised.

**(Amreshwar Pratap Sahi, CJ)**

**( Rajeev Ranjan Prasad, J)**

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