

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1265 of 2013

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Shiv Kumar Sukla S/o Late Indra Deo Sukla R/o Village Mitanda, P.O.-
Raipur Chour, P.S.- Shiv Sagar, District- Rohtas

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna
3. The Deputy Secretary, Establishment, Ministry of Finance, Government of Bihar, Patna
4. The Director, National Savings Scheme, Ministry of Finance, Government of Bihar, Patna
5. The Joint Director, National Saving, Ministry of Finance, Government of Bihar, Patna
6. The National Savings Executive Officer, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate

Mr. Ranvijay Singh, Advocate

For the Respondent/s : Mr. Md. Nasrul Huda Khan, S.C. 1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-01-2019

Re: I.A. No. 7224 of 2013

Heard Shri Sunil Kumar Singh, learned counsel for
the appellant and Shri Md. Nasrul Huda Khan, learned Standing
Counsel for the State of Bihar representing all the respondents.

2. The appeal is reported to be delayed by 09 days.

3. We have considered the affidavit filed in support of
the delay condonation application and we find that sufficient
cause has been shown to condone the delay in filing the appeal.



The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 7224 of 2013 stands allowed accordingly.

Re: L.P.A. No. 1265 of 2013

The Appeal is directed against the impugned judgment dated 20th March, 2013 passed in C.W.J.C. No. 14403 of 2012, whereby the learned Single Judge has rejected the claim of the appellant on the ground that the appellant had not been absorbed or regularized in the department where he was working on deputation namely the National Savings Department, Ministry of Finance, Government of Bihar and, therefore, he had no right to claim any such continuance keeping in view the Constitution Bench judgment in the case of **Secretary, State of Karnataka & Anr. Vs. Umadevi (3) & Ors.**, reported in **(2006) 4 SCC 1**.

2. It is undisputed that no order of absorption was passed but it has been pointed out by the learned counsel for the appellant that the documents with regard to his service had been summoned from his parent organization, namely, BISCOMAUN for the purpose of processing the claim of the appellant for absorption. In spite of this, an order of repatriation was passed on 3rd August, 2012. The appellant had already filed the writ



petition giving rise to this appeal praying for his absorption and since in between the repatriation order had surfaced he challenged the same by I.A. No. 5346 of 2012 in which an interim order of stay was granted on 28th August, 2012. A prayer in the Interlocutory Application had also been made for quashing of the said order. The learned Single Judge in the impugned judgment has referred to the interim order aforesaid and has also recorded the fact that the appellant was allowed to continue at his place of deputation.

3. The peculiar fact which takes a turn in this case is the superannuation of the appellant on 31st August, 2012 which is in very quick succession of the aforesaid events narrated hereinabove. The learned Single Judge did not adjudicate upon the order of repatriation dated 3rd August, 2012 which was specifically under challenge and consequently with the dismissal of the writ petition the interim order dated 28th August, 2012 merged with the same without any relief to the appellant in spite of a challenge having been raised to the same.

4. The appellant has now come up in appeal contending that firstly keeping in view the judgment in the case of Bihar State Government Employee's Association & Ors. Vs. The State of Bihar & Ors. (C.W.J.C. No. 10016 of 2007)



decided on 06.04.2011, the judgment whereof has been upheld in L.P.A. No. 344 of 2012 decided on 16.08.2017 and the S.L.P. against which has been dismissed by the Apex Court, the appellant has been erroneously non-suited on the ratio of the judgment in the case of **Umadevi** (supra). It is urged that if similar benefits have been extended through a judicial intervention in the background aforesaid, then in that event the appellant cannot be given a discriminatory treatment as that would violate Article 14 of the Constitution of India. It is urged that the appellant stands on a similar footing as the employees who have been extended the benefit of absorption and the learned Single Judge ought to have applied the same law in the present case as well, as the case of the appellant is neither dissimilar either on facts or on law in the background that the appellant had challenged his repatriation order.

5. Learned counsel for the State of Bihar contends that the appellant cannot claim a right of absorption and even otherwise no authority had made any recommendation for his absorption in the National Savings Department. In this backdrop the claim of the appellant has rightly been rejected by the learned Single Judge, hence the appeal also deserves to be dismissed.



6. We have considered the submissions raised and what we find is that the appellant had been contesting his matter in the writ petition in the year 2012 prior to his repatriation and claiming absorption on the same footing as was extended to the petitioners in C.W.J.C. No. 10016 of 2007. This aspect of the matter does not appear to have been dealt with by the learned Single Judge nor any reference has been made in relation thereto. The aforesaid judgment of the learned Single Judge in the case of Bihar State Government Employee's Association that has been affirmed by the Division Bench and the S.L.P. against which has been dismissed categorically comes to the aid of the appellant. Consequently, non-consideration of the said judicial pronouncement renders the impugned judgment vulnerable to the aforesaid extent. Not only this, the issue of repatriation under the order dated 3rd August, 2012 was very much under challenge before the learned Single Judge which ought to have been adjudicated upon inasmuch as the very right of the appellant to superannuate either from his parent organization or in the event of absorption from his deputationist organization had to be determined keeping in view the date of his superannuation which arrived on 31st August, 2012 itself. This entire exercise was, therefore, overlooked by the learned Single



Judge. Consequently, we find merit in the submissions raised on behalf of the appellant.

7. For all the reasons aforesaid, we allow the appeal and set aside the judgment dated 20th March, 2013. The issue of repatriation under the order dated 3rd August, 2012 shall be revisited by the authorities keeping in view the directions that were issued in C.W.J.C. No. 10016 of 2007 in the case of Bihar State Government Employee's Association & Ors. Vs. The State of Bihar & Ors. (supra) decided on 06.04.2011. We are issuing this direction consciously inasmuch as the said decision mandates that no repatriation shall be carried out. It is a decision dated 6th April, 2011 that was rendered much before the impugned repatriation order dated 3rd August, 2012. The decision in relation to the absorption of the appellant, therefore, shall be taken in the light of the observations made hereinabove within a period of three months from today. The authority concerned shall take into consideration the fact that the appellant has already retired on 31st August, 2012 and was possibly one of the persons left out in BISCOMAUN for absorption. This would be necessary in order to avoid the vice of discrimination which may otherwise result on any denial of any such claim by the appellant.



8. The appeal is, accordingly, allowed subject to the observations made above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

AFR/NAFR	
CAV DATE	
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