

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16643 of 2015

Umesh Prasad S/o Late Brijnandan Prasad Resident of Village-Bhikhani
Bigha, P.O.-Onda, P.S.-Sarai (Ashthava), District-Nalanda.

... .. Petitioner

Versus

1. The Bihar State Beverage Corporation Ltd. through the Managing Director, Sone Bhawan (5th floor), Birchand Patel Path, Patna.
2. The Managing Director, The Bihar State Beverage Corporation Ltd. Sone Bhawan (5th Floor), Birchand Patel Path, Patna.
3. The General Managar, The Bihar State Beverage Corporation Ltd. Sone Bhawan (5th Floor), Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Girijish Kumar
Mr. Vikash Kumar, Advocates

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-07-2024

Heard Mr. Kumar Kaushik, learned counsel for the petitioner and Mr. Girijish Kumar, learned counsel for the Bihar State Beverage Corporation Limited.

2. The present writ petition has been filed for the following reliefs :-

“(i) For issuance of order, direction or writ of certiorari or any other appropriate writ for quashing the office order contained in Memo No. 1991 dated 30.06.2015 whereby and whereunder the respondent



no. 2 has imposed the punishment of the recovery of Rs. 3,35,880/- at the rate of 50% from the salary of the petitioner with effect from July, 2015.

(ii) For issuance of order, direction of any other appropriate writ for staying the operation of the aforesaid order contained in Memo No. 1991 dated 30.06.2015 during the pendency of the present writ application.

(iii) For issuance of order, direction or writ of mandamus or any other appropriate writ for directing the respondents to refund the amount recovered by the respondent authorities in pursuance of the aforesaid order contained in Memo No. 1991 dated 30.06.2015.”

3. Learned counsel for the petitioner submits that pursuant to an advertisement issued by the Bihar State Beverage Corporation Limited (hereinafter as ‘the Corporation’) bearing No. BSBCL/HR & Admn/09-10/287 dated 29.07.2009 inviting an application for appointment to different posts from amongst employees’ Corporation/Boards/Instrumentality of the State, Central Government. Learned counsel for the petitioner submits that the petitioner being eligible applied for the post of Assistant Account Officer and was duly selected. Consequently, the petitioner was appointed as Assistant Account officer on deputation for one year in the pay scale of 4500-7000 vide order no. BSBCL/HR/09-10/678/730 dated 17.03.2010. The petitioner submitted his joining on 03.05.2010 on the post of Assistant



Account Officer and his period of contract was extended after one year. Learned counsel for the petitioner submits that prior to his appointment in the respondent-Corporation, the petitioner was working in Bihar State Corporative Land Development Bank, Patna since 01.10.1987. Again the Corporation issued an advertisement bearing no. BSBCL/HR/756/11-12/2162 dated 29.05.2013 inviting application for appointment to various posts in the Corporation for a period of one year. The aforesaid advertisement also invited applications from the employees working in the respondent-Corporation due to which the petitioner applied for the post of Depot Manager-cum-Account Officer, the pay scale for which was provided in the advertisement itself and it was fixed to the Rs. 5500-9000. The petitioner thereafter appeared in the selection process and was duly selected for appointment to the post of Depot Manager-cum-Accounts Officer. Pursuant to the Officer Order No. HBSBCL/HR/756/11-12/3880 dated 24.09.2013 of the Corporation by which the selected candidates were directed to join at their respective place of posting. The petitioner was directed to join on the post of Depot Manager-cum-Account Officer and he was posted at Sasaram.

4. Learned counsel for the petitioner submits that the respondent-Corporation issued an order dated 13.10.2014 by which all the Depot Managers were directed to extend the contract of the employees appointed in October, 2013 only on the condition



that they would be paid the salary along with the allowances which was payable to them in their parent Corporation. While the petitioner was posted at Depot Manager at Country Liquor Depot, Sasaram, he had reported to the General Manger that about 76011 bottles/Sachets of 400 ml of spicy brand (SPB-CS-PET-400) was lying unsold at the Sasaram Depot pursuant to which necessary directions were issued from the Headquarters. Learned counsel for the petitioner submits that pursuant to the aforesaid direction, a transfer out order dated 29.05.2015 was issued from Sasaram Depot to the Spicy Beverage Private Limited for transferring 76011 bottles/sachets to the Aurangabad Depot. The Director of the Spicy Beverage Private Limited requested the petitioner vide letter dated. 30.05.2015 to transfer the SPB-CS-PET-400 from Sasaram Depot and accordingly, a Transfer Outward Slip was issued under the signature of the petitioner on 30.05.2015 as well as a Consignment Note dated 30.05.2015 was issued in relation to the aforesaid quantity of 400 ml SPB-CS-PET-400 was issued to the agent for transportation of the liquor to Aurangabad. Learned counsel for the petitioner submits that the respondent no. 3 all of a sudden issued a show cause to the petitioner vide letter no. 1656 dated 05.06.2015 stating therein *inter alia* that the 76011 sachets of spicy Beverage also included Country Liquor of Shipra Beverage Private Limited apart from that of Spicy Beverage Private Limited whereas no sachets/bottles of Shipra Beverage was



available in Sasaram Depot on 29.05.2015 and the petitioner was directed to submit a reply within three days as to how bottles of Shipra Beverage were found in the transferred 76011 sachets/bottles. Learned counsel for the petitioner submits the petitioner submitted his reply vide letter no. 56 dated 08.06.2015 in response to the aforesaid show cause stated therein that the dealer of Shpra and Spicy Beverage are the same and the colour and size of the bottles of both the brands are identical and thus there may have been the possibility of mix up by the Assistant Accountant and labourers. Learned counsel for the petitioner submits that all of a sudden the petitioner has received an office order contained in Memo No. 1991 dated 30.06.2015 issued by the Respondent No. 2 by which a recovery of Rs. 6,71,760/- has been directed to be made from the salary of the petitioner and (one Sri Rishikesh Singh, Assistant Accountant Rs. 3,35,880 each). It is further directed that the aforesaid amount would be recovered from the salary at the rate of 50% with effect from July, 2015. Learned counsel for the petitioner submits that Article 65 of the Article of Association of the Corporation gives the Board of Directors, the power to take action in matters relating to the conditions of the service of an employee and the Managing Director has no jurisdiction to issue the impugned order without any such decision of the Board of Directors. The proviso of Articles 65 of the Article of Association further provides that until



the Corporation makes its own regulation such appointment, retirements, removals and the other terms and conditions, including matters connected with the services shall be regulated in accordance with the provisions of Bihar Civil Services Rules, Bihar Civil Servants (Classification, Control and Appeal) Rules, 1956, Bihar Government Servants Conduct Rules, Recruitment Rules and other services rules and regulations in force in the State of Bihar from time to time. Since the Corporation has not made any rule and regulations in respect of the service conditions of the employees, the CCA Rules are applicable to petitioner in the present matter and the impugned order has been passed without any enquiry and without considering relevant materials as well as the defence of the petitioner that no loss has been caused to the Corporation and it was merely a computer software record error, the impugned order is illegal and arbitrary and the recovery of the amount at the rate of 50% of the salary of the petitioner is too harsh since the petitioner has already drawn a meagre salary. From perusal of Article 65(5) of the Article of Association of Corporation, it appears that Board has not delegated such power to the Managing Director to take action against the petitioner and Board has power to take action against the petitioner.

5. Learned counsel for the petitioner relied upon a judgment in the case of **Ashok Kumar Ratilal Patel Vs. Union of**



India and Another, reported in (2012) 7 SCC 757, referring paragraph nos. 13, 14 and 15, which are as follows :

“13. Ordinarily transfers on deputations are made as against equivalent post from one cadre to another, one department to another, one organisation to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person is continued to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment(recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article [14](#) and Article 16 are to be followed. No person can be discriminated nor it is open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person, who applies for appointment on deputation has indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non- suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation



for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except for ground of unsuitability or unsatisfactory performance.”

6. Learned counsel for the petitioner also relied upon a judgment in the case of **Bihar State Beverages Corporation Limited and Others Vs. Naresh Kumar Mishra and Others, reported in (2019) 5 SCC 110**, referring paragraph nos. 19 and 23, which are as follows:

“19. Now, so far as the impugned judgment and order passed by the Division Bench of the High Court directing the appellant Corporation to grant the pay scale to the respondents as per the 6th PRC is concerned, it is submitted that, as such, the Corporation itself in the year 2010 took a conscious decision to adopt and grant the benefit of 6th PRC to the employees of the Corporation. However, it was on the advice of the Finance Department, the Corporation did not grant the benefit. It is submitted that the Finance Department advised that the benefit of 5th PRC can be given to the permanent employees of the Corporation and may not be given to the employees who are on deputation or on contract basis. It is submitted that it is an admitted position that there is not a single employee working in the Corporation who



is appointed on permanent basis and the entire staff/employees of the Corporation are either on deputation or contract basis who are/were employees of other Boards/Corporations. It is submitted that, therefore, the Division Bench of the High Court has rightly observed that such an advice of the Finance Department is a non-application of mind. It is submitted that, therefore, the High Court has rightly granted the relief and has rightly directed the appellant Corporation to pay the pay scale as per the 6th PRC as per their own decision in 2010.

23. Now, so far as the quashing and setting aside the Resolution dated 27-3-2012 by which the Corporation resolved to pay salary to the employees of the Corporation as is being paid in the parent Board/parent organisation is concerned, it is required to be noted that it is not in dispute that the respective original writ petitioners are on deputation from different Boards/ organisations. Therefore, if the Resolution dated 27-3-2012 is permitted to be implemented, in that case, there shall be disparity in the pay scale/salary of the employees of the Corporation doing the same/similar work. There may be different pay scales/salaries in the respective parent organisations. However, when they are working with the Corporation and doing the similar work, they have to be paid the salary which is paid to other employees doing the same/similar work. It is not in dispute that the employees working on different posts in the Corporation are doing the same/similar work. Therefore, the Division Bench of the High Court has



rightly applied the "principle of equal pay for equal work" and has rightly quashed and set aside the Resolution dated 27-3-2012.

7. Learned counsel for the Corporation submits that from perusal of Article 65 of the Articles of Association of the Corporation, the Managing Director is competent to take all decisions which he finds necessary subject to the supervision and control of the Board of Directors under the provisions of Article 68 of the Article of the Article of Association of the Corporation and from perusal of Office Order bearing Memo No. 1991 dated 30.06.2015 it appears that a penalty of Rs. 3,35,880/- has been imposed upon the petitioner for the loss incurred in course of transfer from Sasaram to Aurangabad Depot of 76011 bottles of M/s Shipra Beverages Private Limited and 76011 bottles/sachets of 400 ml of Spicy Brand lying unsold at Sasaram Depot and its procedural transfer to Aurangabad Depot. In course of transfer, bottles of Shipra Beverage were reported to have been found at Aurangabad Depot by Aurangabad Depot Manager, Spicy Brand was never ordered to be transferred from Sasaram Depot. Excise Superintendent, Aurangabad also affirmed with the fact of Shipra Brand found at the Aurangabad Depot. It was found that his act was done by the Depot Manager, Sasaram in collusion with other employee one Rishikesh Singh and order of recovery in proportionate to loss incurred by the Managing Director of the



Corporation on 30.06.2015 and it appears that the Managing Director has the power to issue such order and from perusal of Article 66 of the Articles of Association of Corporation, which reads as follows:- *“Notwithstanding anything said in articles, 46 & 47 above, the Managing Director shall have the powers to exercise the powers of Board of Directors in anticipation of Board of Directors provided that all such instances of exercising this power shall be placed for approval before the Board of Directors at the Board’s immediate next meeting.”*.

8. Having regard to the rival submissions of the parties, it appears that the impugned order has been passed after giving an opportunity to the petitioner and after consideration reply of the petitioner, the impugned order has been passed and the Managing Director of the Corporation has the power under Article 65(23) of Articles of Association of the Corporation, which reads as follows:- *“to ensure that Managing Director and the subordinates are delegated adequate authority to carry out their responsibilities for the fulfillment of the objectives at set out above with such appropriate limitation to their authority as may be defined in writing and clearly understood with respect to management, administration and operation of the Company”*.

9. In the facts and circumstances of the case and the reason mentioned hereinabove, this Court does not find any



infirmity or illegality in the order dated 30.06.2015 passed by the respondent no. 2, so as to warrant any interference, hence, the present writ petition stands dismissed being devoid of any merit.

10. There will be no order as to costs.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.07.2024
Transmission Date	N.A.

