**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Letters Patent Appeal No.1179 of 2018**
**In**
**Civil Writ Jurisdiction Case No.17813 of 2017**

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Anil Kumar, S/o-Sri Tribhuwan Prasad Singh, Resident of Village-Sorampur, Post-Belhowri, P.S.-Dulhan Bazar, Dist.-Patna.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Patna.
2. Bihar State Beverages Corporation Ltd. through its Managing Director, Vidyut Bhawan-II, 1st Floor, Jawahar Lal Nehru Marg, Patna.
3. The Managing Director, Bihar State Beverages Corporation Ltd. Vidyut Bhawan-II, 1st Floor, Jawahar Lal Nehru Marg, Patna.
4. General Manager (Finance) Bihar State Beverages Corporation Ltd. Vidyut Bhawan-11, 1st Floor, Jawahar Lal Nehru Marg, Patna.
5. General Manager, Human Resource and Administration, Bihar State Beverages Corporation Ltd., Vidyut Bhawan-11, 1st Floor, Jawahar Lal Nehru Marg, Patna.
6. Manager, Human Resource and Administration, Bihar State Beverages Corporation Ltd., Vidyut Bhawan-11, 1st Floor, Jawahar Lal Nehru Marg, Patna.
7. The Chairman, Bhumi Vikash Bank, Budha Marge, Patna.
8. The Managing Director, Bhumi Vikash Bank, Budha Marge, Patna.
9. The Assistant Secretary, Bhumi Vikash Bank, Budha Marge, Patna.
10. The Vigilance Officer, Bhumi Vikash Bank, Budha Marge, Patna.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Abhinav Srivastava, *Amicus Curiae* |
| For the State | : | Mr.Manish Kumar, AC to AAG-6 |
| For the Corporation | : | Mr. Vikas Kumar, Advocate |
| | | Mr. Girijesh Kumar, Advocate |
| For the Bank | : | Mr. Rajesh Prasad Chaudhary, Advocate |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE RAJIV ROY**
**CAV JUDGMENT**
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 25-01-2024**

The appeal was posted peremptorily, after it was adjourned *sine die* on 29.11.2019 by another Division Bench, which had noticed the pendency of Special Leave to Appeal No. 25842 of 2014 against the decision of a larger Bench of this Court in ***The Organizer, Dehri C.D. & C.M. Union Ltd. Vs. State of Bihar*** reported in ***2014 (1) PLJR 695***. The adjournment *sine die*, awaited the decision in the Special Leave to Appeal. The appellant had, by a letter, addressed to the Registry, requested for early disposal of the matter, upon which, it was posted peremptorily. The appellant appeared in person and he was visibly incapacitated and unable to articulate himself, saddled further by his travails, which commenced with his dismissal from service; assertively stated to be grossly illegal and arbitrary. We, hence, appointed Shri Abhinav Srivastava, learned counsel to assist the appellant.

2. The larger Bench decision, referred to by us, held unanimously that a Co-operative Society, as is the identity of the respondent herein, is not a 'State' coming within Article 12 of the Constitution of India, hence, not amenable to Article 226. Despite holding so, the majority was of the opinion that since, an Administrator, a government officer, was incharge the Society would be amenable to writ jurisdiction and also held that even if the Administrator, so appointed, is not a government

servant; when such appointment is made by the Registrar, Co-operative Societies, to work directly under his control and superintendence, even then the Administrator remains or becomes a statutory authority and such character of the office enables invocation of Article 226; to correct actions which would be in conflict with public duties and good governance. The lone dissent was only insofar as the appointment of an Administrator or Special Officer; even if the appointee be a government servant, being a mere fortuitous circumstance which has no effect upon the constitution or the function of the society; thus, even then, excluding it from the ambit of Article 12.

3. The learned counsel for the Society also relied on a judgment of this Court (authored by myself) in LPA No. 253 of 2017, titled as ***Ajit Kumar Singh vs. The State of Bihar***. The larger Bench decision was taken note of and it was also noticed that the same was stayed in the SLP filed before the Hon'ble Supreme Court. The Division Bench, though expressed a difference of opinion with the majority decision; holding a Society to be amenable to writ jurisdiction when managed by an Administrator, found no reason to refer the matter since the declaration made as to a Co-operative Society not coming

within the definition of 'State' under Article 12 of the Constitution of India, was indisputable. The Division Bench noticed that the Co-operative Society, which was the respondent in that case, was under the administration of an elected managing committee, as is the case in the instant appeal also. The Division Bench referred to ***Ramkrishna Mission Vs. Kago Kunya; (2019) 16 SCC 303***, ***Federal Bank Ltd. vs. Sagar Thomas; (2003) 10 SCC 733*** and ***K.K.Saksena vs. International Commissioner on Irrigation and Drainage & Ors.; (2015) 4 SCC 670***, to reject the writ petition.

4. We are quite conscious of the binding nature of the binding precedents of the Hon'ble Supreme Court. Despite the larger Bench decision of this Court having been stayed by the Hon'ble Supreme Court, we cannot have a different opinion under Article 12. However, the facts, as coming out from the present case, *prima facie*, are inextricably connected with the public functions discharged by the State, for the reason of the entire foundation of the allegation which led to the dismissal of the appellant was the deputation made by the Co-operative Society to the Beverages Corporation of the State; which later institution is definitely amenable to the writ jurisdiction. The appellant at the time of his dismissal was

working in a public sector undertaking which was under the total and absolute control of the State.

5. On the above reasoning, we proceeded to hear the matter and we would speak further on this after consideration of the facts, which is necessary to have a holistic view on the invocation of Article 226, which strikes down illegalities, inequities, arbitrariness and authoritarianism even if it is displayed by a private individual; which, in the present case, is alleged on a Co-operative Society. The Co-operative Society though, not coming within the ambit of Article 12, still discharges public functions and in the present case, had deputed an officer to a public sector undertaking and the action of the public sector undertaking in cancelling the deputation is also complained of, as being not within the bounds of law. The learned Single Judge dismissed the writ petition only noticing the larger Bench decision of this Court and finding the writ petition to be not maintainable and repatriation of the appellant complained of, being a natural consequence of the withdrawal of deputation.

6. The appellant an Accountant in the Bhumi Vikas Bank (hereinafter referred to as the ‘respondent-Bank’), was deputed to the Bihar State Beverages Corporation Ltd.

(hereinafter referred to as the 'Beverages Corporation'). After years of deputation, abruptly and without any notice, the appellant was repatriated to his parent organization, the respondent-Bank, which order was challenged in the writ petition. Admittedly, the appellant was continuing in the Beverages Corporation on deputation from the respondent-Bank commencing from 05.07.2007, as seen from Annexure-3 series; when he was suddenly repatriated on 20.04.2017 by Annexure-1 order. The repatriation order indicates that the Beverages Corporation was informed that departmental proceedings were conducted against the appellant in the light of certain allegations of indiscipline and financial irregularities in the Bank and he was dismissed from service.

7. If, in fact, the dismissal was on account of misconduct committed by the appellant, while he was in the service of the Bank, then necessarily there should have been a repatriation order before the enquiry proceedings. That being absent, the repatriation order at Annexure-1 works as a dismissal order, since there is no parent organization to which the appellant could have joined, after the repatriation. As we noticed, the Beverages Corporation, it cannot be disputed, is a 'State' coming within the ambit of Article 12 of the Constitution

of India, against which order the above appeal has been filed.

8. Moving forward with the facts, the appellant, while he was working with the respondent-Bank, applied under Annexure-2 advertisement, issued by the Beverages Corporation, seeking for appointment on contract/deputation as an employee of the Corporation. The appellant, who was employed with the respondent-Bank, applied for the post of Assistant Accountant in the Beverages Corporation. The appellant was selected and joined the post of Assistant Accountant in the Beverages Corporation on 05.07.2007, at Muzaffarpur. Pausing here for a moment, we have to notice that the specific deputation sought, by the advertisement was *inter alia* for deputation from Boards or Corporations; which has to be presumed to be entities coming under Article 12 of the Constitution. The appellant, who applied under the advertisement, was appointed and he joined specifically with the consent of the respondent-Bank, in whose service he retains a lien. The appellant, while working in the Beverages Corporation was transferred to Ara and then as a Depot Manager at Aurangabad, wherein he was continuing from 21.10.2013; when he was served with Annexure-1 repatriation order, in the year 2017. While continuing in the Beverages Corporation, the

appellant was also granted pay fixation, as is seen from Annexure-4.

9. The Managing Director of the respondent-Bank, after the deputation of the appellant in 2007, vide Annexure-5 dated 17.10.2012, sought for repatriation of the deputationists sent to Beverages Corporation, which was followed up with Annexure-6 dated 21.02.2013. Annexure A-6 enclosed a list of 31 employees so deputed, in which the appellant’s name was at Sl. No. 21. We have to immediately notice that after the deputation in the year 2007; the first communication addressed by the respondent-Bank regarding the deputationists was in the year 2012. Again, by Anenxure-8 dated 09.01.2014; also enclosed with a list of 30 employees, the respondent-Bank requested the Beverages Corporation to return the deputed employees, to which the Managing Director of the Beverages Corporation replied by Annexure-9 seeking continuation of the deputed employees. In the list attached to Annexure-9, the appellant's name figures at Sl. No. 20. The deputed employees continued with the Beverages Corporation, and the respondent-Bank acquiesced to the same and never informed or directed the employees, directly to report back to the respondent-Bank.

10. In the meanwhile, the appellant made a complaint to the Central Provident Fund Commissioner and the Regional Provident Fund Commissioner as also the Central Vigilance raising an allegation of misappropriation of the General Provident Fund amounts of the employees of the Bank, which is produced at Annexure-10. It is also alleged that the Chairman of the respondent-Bank threatened the appellant of dire consequences. The appellant apprehends that, as a counter blast to the complaint raised, against the respondent-Bank, a communication was addressed to the Beverages Corporation alleging dismissal. The appellant has also produced Annexure-11 to point out that even in the year 2013, the appellant was diagnosed with movement disorder by the Neurology Consultant in the Department of Physiology of the All India Institute of Medical Sciences. We noticed at the initial stage itself that the appellant was physically incapacitated being afflicted with spasms and unable to even stand on his feet for a long time, the appellant was offered a seat but still was unable to articulate, for which reason, we appointed an *Amicus.*

11. We specifically queried from the respondent-Bank as to the proceedings taken against the appellant for which the respondent-Bank relies on supplementary counter affidavit

dated 27.06.2013 and Annexures F to J, the translated copy of which also have been filed as seen from the records. Annexure-F is a letter dated 27.08.2008, allegedly addressed to the appellant, who is described as an Accountant in the Land Development Bank, now on deputation to the Beverages Corporation. It is stated in the letter that the appellant was deputed to the Beverages Corporation for 11 months and had left the service of the Bank on deputation in 04.07.2007, pursuant to the Bank's approval by Memo No. 1266 dated 04.07.2007. It was alleged that he had not returned to the parent department after a period of 11 months and neither was there a request from the Beverages Corporation for extension of service nor a request from the employee, ie: the appellant. A show cause was sought, failing which disciplinary action was threatened and a week was offered to give explanation. Again, a letter dated 08.09.2008 was addressed with the very same description and address, pointing out that there is no explanation proffered and again granting a week's time. There is no substantiation of the service of these notices having been effected, which is relevant especially since the appellant feigns total ignorance about the enquiry.

12. Annexure-G is the office order by which the

departmental proceeding was initiated, which also contains the charges. The charges alleged were three in number; (i) non-joining of the parent department after deputation period of 11 months in the Beverages Corporation, (ii) no request for extension of service made after expiry of the period of deputation and (iii) despite repeated instructions, non-joining, thus absconding from the office unauthorizedly.

13. The enquiry report is said to have been furnished to the appellant by Annexure-H. The documents produced show that, despite the various communications regarding the misconduct alleged and the enquiry constituted, having been addressed to the place of deputation and the residence of the appellant, neither were these received as specifically pleaded by the appellant, nor was any evidence led at the enquiry. It is only assumed that, since the letter regarding information sent to the appellant had not been returned, he had received it. Immediately, we have to notice that there is nothing placed on record, as to the various communications including the show cause notice having been sent by registered post. The enquiry report accompanying the covering letter, Annexure-H, speaks of the communications having been addressed to the 'deputed place'(*sic*); but there is nothing to show that the said

communication was also sent in registered post.

14. In fact, the correct procedure would have been for the parent organization to ask for repatriation of the appellant for reason of misconduct alleged against him and then to proceed for enquiry after he joins in the parent organization. Such communications should have been addressed to the organization to which the employee had been deputed, A better manner of communication of the show cause notice was to address the organization to which he is deputed and request due service of the same with proper acknowledgment taken from the employee and repatriation, for the purpose of carrying on the enquiry. No such transparent procedure for service of notice has been done by the respondent-Bank.

15. What surprises us is the fact that though such proceedings were said to have been taken right in the year 2008 and concluded in the year 2010. Annexure-6 dated 21.02.2013 and Annexure-8 dated 09.01.2014; both issued by the respondent-Bank seeking repatriation of the deputed employees; enclosing the list of deputed employees, indicate the appellant's name, the first one at Sl. No. 21 and the second at Sl. No. 20. If the appellant was dismissed from service in the year 2010, there was absolutely no reason why his services should have been

sought to be repatriated. We cannot but observe that the bank's action in producing such documents without substantiation of service; also belied by the communications addressed by the respondent-Bank to the Beverages Corporation, even subsequent to such proceeding, reveals an attempt by the respondent-Bank to deliberately mislead this Court.

16. The enquiry report attached along with Annexure-H shows an eye-wash carried out by the Enquiry Officer. There are no documents marked in evidence by any witnesses examined. Though the Inquiry Officer says that the notices have been issued by post and the record was presented and he was satisfied, there is nothing indicated as to any acknowledgment having been received by the appellant/delinquent employee. As we noticed earlier, the organization to which the appellant was deputed was neither informed about the enquiry nor was there any request for repatriation before the enquiry was commenced.

17. On 06.11.2008, it is recorded that the record was presented, the charged employee absent, despite information through letter dated 15.10.2008, the Presenting Officer present and after consideration, the employee given a last chance to obtain the charge sheet and evidence. On

24.11.2008, it was recorded that the charged employee, despite information, has not turned up. It was assumed that he does not want to receive the charge sheet and evidence and hence, the departmental proceeding itself was stopped and it was decided to record the opinion *ex parte*. On 10.07.2009, the records were presented and a laconic statement is made *'after examination of documents and evidence available on records, recorded the report. Record be sent to the Managing Director"* (sic).

18. There was no evidence led at the enquiry and merely on the basis of the records presented by the Presenting Officer, the Enquiry Officer agreed with the charges levelled against the charged employee. The Managing Director is also said to have issued a communication on 18.09.2009 produced as Annexure-I, attaching a photocopy of the enquiry report and seeking explanation. No explanation having been received; Annexure-J order is said to have been passed. After dealing with the charges and the proceedings in three paragraphs, it was held so: -

> "On the basis of proven allegation against Shri Kumar and in the light of the inquiry report of the conducting officer and the documents available in the file, the departmental proceeding is being closed with the following punishment:-
>
> Shri Anil is dismissed from service with effect

from the date of issuance of the order."

19. The order of penalty is dated 31.03.2010. There is no substantiation of the service of the said order directly to the appellant or through the Beverages Corporation where he was continuing in deputation immediately after the order was passed or at any time thereafter. The Beverages Corporation was also not informed of the dismissal since the appellant continued in the Corporation till 2017.

20. We have already noticed that none of the documents, produced as Annexure-F to I, are established to have been served on the appellant. Admittedly, this was also never informed to the organization in which the appellant was continued on deputation, or to the appellant through that organization. On the contrary, after the date of dismissal, the respondent-Bank had repeatedly asked for repatriation of the deputationists, including the appellant, in the lists attached with the request for repatriation, which were also in the years 2013 and 2014. Admittedly, there were a number of employees deputed to the Beverages Corporation and there is nothing stated as to the other employees having sought for continuation in the Beverages Corporation or the Corporation having sought for extension of their deputation. The respondent-Bank is also

silent about any proceedings taken against the other deputationists; if their deputation was not extended or continued. Obviously, there is no extension or continuation, with respect to any of the deputationists, as is evidenced from the repeated requests made by the respondent-Bank for repatriation.

21. Added to this is Annexure-1, which is the office order cancelling the deputation of the appellant issued by the Beverages Corporation. The counter affidavit of the Beverages Corporation dated 15.12.2023, produced Annexure-R/1, a letter dated 17.03.2017 from the respondent -Bank to the Beverages Corporation, which led to Annexure-R/2, which is a copy of Annexure-A/1 dated 20.04.2017, challenged in the writ petition. Annexure-R/1 letter dated 17.03.2017 issued by the respondent-Bank was received at the Beverages Corporation on 10.04.2017. Annexure-R/1 contains the information that the appellant, *"Accountant who is probably working under your office at Aurangabad"* (sic) has been proceeded departmentally, in which a decision has been taken to dismiss him from bank service on charges of 'indiscipline and *financial* irregularities'(sic). It is not clear as to what prompted the respondent-Bank to issue such a letter seven years from the date on which the appellant was alleged to have been dismissed from

service. It is also very pertinent that the respondent-Bank has alleged that the dismissal was on account of charges of indiscipline and financial irregularities, while the misconduct alleged and proved, even as asserted by the respondent-Bank, was only of abandonment of employment for reason of the employee having not rejoined service after expiry of period of deputation. This further persuades us to find that there was a concerted attempt by the respondent-Bank to mislead this Court by doctoring documents.

22. We cannot but, find the entire proceedings to be bad including that of the repatriation made by the Beverages Corporation**.** The appellant was deputed from the respondent-Bank along with other employees and despite repeated requests from the respondent-Bank, the deputationists were continued in the Beverages Corporation. The initial deputation and continuance were demurred to, by the respondent-Bank, but for a statement made in Annexure-9, a communication dated 31.01.2014 that the deputationists would be deemed absorbed in the services of the Beverages Corporation, if they are not repatriated. This is easily said than done, and it does not bind either the Corporation or the appellant.

23. The Beverages Corporation does not have a

case that the deputed employees were repatriated, despite frequent requests made by the respondent-Bank. At least, from the year 2014, the employees were continued in the Beverages Corporation without the consent of the respondent-Bank. The repatriation of the appellant was made only on the communication of the respondent-Bank, that the appellant has been dismissed from service on the allegations, proved in an enquiry, of indiscipline and financial irregularities. The disciplinary enquiry, as asserted by the respondent-Bank and the order of penalty of dismissal on conclusion of such disciplinary proceedings, according to us, is belied and it is borne out that such an enquiry was never initiated and continued at the time when it is alleged to have been conducted.

24. The further communications of the respondent-Bank, as we have noticed in this judgment, clearly indicate that the appellant was continued in the rolls of the respondent-Bank even after 31.03.2010, on which date, the dismissal order is alleged to have been passed. Further, the disciplinary enquiry itself is vitiated by the principles of natural justice and there being absolutely no evidence, led at the enquiry. There was no proper notice served to the delinquent employee and acknowledgment received, or the organization to

which the employee was deputed, informed, as is required.

25. We have already observed that when an employee is deputed ,then to initiate a disciplinary enquiry, first, the employee has to be repatriated for which, in this case, no request was made to the organization to which the employee was deputed. There was not even a notice sent, of the alleged enquiry, to the Beverages Corporation, in whose service the employee was continuing at the time of the alleged enquiry. The dismissal order also was not communicated to the Beverages Corporation, to which delinquent employee was deputed, at any time, for seven years after the punishment of dismissal was imposed. The Beverages Corporation being a State under Article 12 of the Constitution, should have been more cautious in acting upon the allegation of dismissal on charges of indiscipline and financial irregularities, when the employee was continuing with it for the last ten years.

26. We find the order impugned at Annexure-A1 to be completely vitiated by illegality and arbitrariness. Enquiry proceedings and the order of penalty, as claimed by the Bank is also vitiated for violation of principles of natural justice, the enquiry not being properly conducted, no evidence having been led at the enquiry and the entire proceedings suspect and it

being a fraudulent exercise projected; belied by the documents of the respondent-Bank itself. There can be no allegation levelled against the appellant, that too in isolation, picking him out of the numerous deputationists, for levelling a charge of abandonment of employment on the ground of non-joining after the expiry of period of deputation.

27. Having set aside Annexure-1 issued by the Beverages Corporation, especially finding it to be one issued illegally and arbitrarily without conducting further inquiries, the appellant is deemed to have continued in the Beverages Corporation. The appellant's date of retirement, as seen from the list, annexed to Annexure-8 dated 09.01.2014, is 28.02.2023, accepted by the respondent-Bank. The appellant had been continued in the Beverages Corporation with pay fixation and he is entitled to the entire pay due to him from the date of Annexure-A/1 to the date of retirement, being 28.02.2023. The Beverages Corporation, which is undisputedly ‘State’ under Article 12 of the Constitution is directed to pay the entire salary during the said period without making any deductions to the provident fund and including the employer’s share of the provident fund also. The arrears shall be computed and the same shall be disbursed along with, clear computation of arrears,

communicated in writing to the appellant, within a period of three months from the date of this order.

28. The Beverages Corporation is left with the liberty to recover the amounts from the respondent-Bank on whose malicious actions, the respondent Corporation was denied of the services of the appellant, for the remaining period, for which, Beverages Corporation has now been mulcted with the liability of salary due to the appellant.

29. The conduct of the respondent-Bank is found to be reprehensible; for that and the act of deliberately trying to mislead this Court, we impose costs of Rs. 1,00,000/-, which shall be paid to the appellant, for the protracted legal proceedings he was subjected to by the respondent-Bank. The respondent-bank being a Co-operative Society, would be entitled to proceed against the officers, who conspired to bring forth the fictitious proceedings, presumably in retaliation of the appellant's complaint to the EPFO and recover the amounts from such officers. This shall include the costs and the amounts, if any, recovered by the Beverages Corporation from the respondent-Bank.

30. We notice that an appeal filed by the appellant, before the respondent-Bank against the order of

penalty, was considered and the punishment modified to compulsory retirement. The appeal was considered only on our persuasion at the last posting date, when we directed the appellant to appear before the appellate authority. This order now produced in the records is of no consequence, in the light of the interference caused to the order of punishment.

31. We record our appreciation of the assistance of the *Amicus Curiae*, who meticulously studied the facts and placed it before us.

32. The appeal is allowed with exemplary costs, as above.

33. Interlocutory applications, if any, shall stand disposed of.

**(K. Vinod Chandran, CJ)**

**Rajiv Roy, J:** I agree

**(Rajiv Roy, J)**

Sujit/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | 16.01.2024 |
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