

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15085 of 2024

Manish Kumar Son of Krishna Prasad Sinha Resident of D/7 Magadh Vihar,
Gardanibagh, P.O.- Anishabad, Police Station- Gardanibagh, District- Patna-
800002.

... .. Petitioner/s

Versus

1. The Bihar State Cooperative Marketing Union Limited (BISCOMAUN) through its Administrator, 3rd Floor, Biscomaun Tower, West Gandhi Maidan, Patna- 800001.
2. The Administrator, Bihar State Cooperative Marketing Union Limited (BISCOMAUN), 3rd Floor, Biscomaun Tower, West Gandhi Maidan, Patna- 800001.
3. The Managing Director, Bihar State Cooperative Marketing Union Limited (BISCOMAUN), 3rd Floor, Biscomaun Tower, West Gandhi Maidan, Patna- 800001.
4. The Secretary-cum-Deputy Managing Director, Bihar State Cooperative Marketing Union Limited (BISCOMAUN), 3rd Floor, Biscomaun Tower, West Gandhi Maidan, Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumar Kaushik, Advocate
For the Respondent/s : Mr.Ashish Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 07-10-2024

Heard learned counsel appearing on behalf of the petitioner and the learned counsel for the BISCOMAUN.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:-

“i. For issuance of an order, direction or a writ of mandamus for directing the respondent Bihar State Cooperative Marketing Union Limited (BISCOMAUN) for confirming the service of the petitioner on completion of 2 years of probation



period and absorbing him in the regular service from the date on which he completed 2 years of service subject to scrutiny of his service on probation by the competent authority.

ii. For issuance of an order, direction or a writ of mandamus for directing the respondent authorities to extend the pay scale attached to the post of HR Officer as disclosed in the advertisement viz Rs.20,000-35,338/-+ additional admissible allowances to the petitioner from the date on which his two years probation period expired (24.12.2020) to the date of payment along with applicable interest since the petitioner ought to have been confirmed in service and absorbed in regular service from the aforesaid date.”

3. Learned counsel appearing on behalf of the petitioner submitted that in terms of offer of appointment, after completion of two years of probation the petitioner was required to be taken into regular service considering the fact that there are available vacant posts.

4. Learned counsel further submitted that in this regard, the petitioner has already filed a detailed representation before the Administrator of BISCOAUN for considering his grievance, as prayed for in the preset writ petition.

5. *Per contra* learned counsel appearing on behalf of the respondents submits that the writ petition is not maintainable in view of the fact that BISCOAUN is not amenable to writ jurisdiction being not a State within the meaning of Article 12 of the Constitution of India.



6. Heard the parties.

7. Considering the limited relief sought for by the petitioner, I do not find it proper to direct the respondents to file counter affidavit and the writ petition is disposed of at this stage.

8. It is admitted fact that the petitioner has been selected and appointed and he is under probation and the service being contractual in nature with a condition that after stipulated time period, he will be taken into regular establishment and same having not been done in spite of the fact that the petitioner has rendered more than two years on contractual basis fulfilling the terms of contract and if not taken into regular establishment, legitimately expected to be permitted to continue until there have been some natural grounds for withdrawing it.

9. The Apex Court in the case of **Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.** reported in **(2006) 4 SCC 1**. The same has been reiterated by the Apex Court in the case of **Sivanandan C.T. vs. High Court of Kerala**, reported in **(2024) 3 SCC 799**, wherein it was stated that a claimant expects the public authority to follow a particular procedure before taking a decision and on basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness



and non-arbitrariness in Government dealings with individuals.

I find it appropriate to reproduce paragraphs no. 22, 23, 24, 38, 39 & 40, which are reproduced, *inter alia*, as follows:-

22. The doctrine of legitimate expectation was crystallised in common law jurisprudence by Lord Diplock in the locus classicus, Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 (HL)]. Lord Diplock held that courts can exercise the power of judicial review of administrative decisions in situations where such decision deprives a person of some benefit or advantage which:

22.1. They had in the past been permitted by the decision-maker to enjoy and which they can legitimately expect to be permitted to continue until there has been communicated to them some rational grounds for withdrawing it on which they have been given an opportunity to comment; or

22.2. They have received assurance from the decision-maker that the advantage or benefit will not be withdrawn without giving them an opportunity of advancing reasons for contending that the advantage or benefit should not be withdrawn.

23. The doctrine of legitimate expectation emerged as a common law doctrine to guarantee procedural fairness and propriety in administrative actions. Legitimate expectation was developed by the courts to require a degree of procedural fairness by public authorities in their dealings with individuals. Denial of an assured benefit or advantage was accepted as a



ground to challenge the decision of a public authority.

24. By the 1990s, the Indian courts incorporated the doctrine of legitimate expectation in the context of procedural fairness and non-arbitrariness under Article 14 of the Constitution. In Food Corpn. of India v. Kamdhenu Cattle Feed Industries [Food Corpn. of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71], this Court held that public authorities have a duty to use their powers for the purposes of public good. This duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non-arbitrary manner in their interactions with the State and its instrumentalities. This Court held that a decision taken by an executive authority without considering the legitimate expectation of an affected person may amount to an abuse of power : (SCC p. 76, para 7)

“7. ... To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.”

The Court held that whether the expectation of a



claimant is legitimate or not is a question of fact which has to be decided after weighing the claimant's expectation against the larger public interest. Thus, while dealing with the claims of legitimate expectations, the court has to necessarily balance the legitimate expectation of a claimant against the larger public interest.

38. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.

39. In Paponette v. Attorney General of Trinidad & Tobago [Paponette v. Attorney General of Trinidad & Tobago, (2012) 1 AC 1 (PC)] , the Privy Council held that a claimant only has to prove the legitimacy of their expectation. In this regard, the claimant must establish that the expectation is based on an existing promise or practice. Once the claimant establishes their



legitimate expectation, the onus shifts to the authority to justify the frustration of the expectation by identifying any overriding public interest. This Court has been applying similar burden requirements in cases of legitimate expectation. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499; State of Jharkhand v. Brahmputra Metalics Ltd., (2023) 10 SCC 634; State of Bihar v. Shyama Nandan Mishra, (2022) 17 SCC 420 : 2022 SCC OnLine SC 554.]

40. The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In Nadarajah [R. (Nadarajah) v. Secy. of State for the Home Deptt., 2005 EWCA Civ 1363] , Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

10. The writ petition is accordingly allowed considering the fact that there are vacant posts available and



Clause 1(a) of the appointment letter makes the provision to absorb the petitioner after completion of two years of probation.

11. The petitioner, if so advised, may file a detailed representation before the Administrator of BISCOAUN and in case, there are vacant posts available, the case of the petitioner, in view of the above settled principle of law as discussed hereinabove, may be considered for his absorption in accordance with law expeditiously.

12. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.10.2024
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