

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5530 of 2017

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Arun Kumar Chaudhary Son of Late Krishna Kant Choudhary, Resident of
vill. P.O. Kanholi, Via - Sakri, P.S. Manigachhi, District – Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Co - Operative Department, Bihar
3. The Registrar, Co - Operative Department, Bihar, Patna
4. The Managing Director, BISCOMAN, Biscoman Bhawan, Gandhi Maidan, Patna
5. The Special Officer Administrator , BISCOMAN, Biscoman Bhawan, Gandhi Maidan, Patna
6. The Sub - Divisional Officer, BISCOMAN, Darbhanga
7. The Senior Area Officer, BISCOMAN, Samastipur
8. The Area Officer, BISCOMAN, Darbhanga
9. The Secretary, BISCOMAN Bhawan, Gandhi Maidan

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jawed Gaffar Khan, Adv. Mr.Arun Kumar Prasad, Adv. Mr. Anuj Kumar, Adv.
For the Respondent/s	:	Mr. Mahtab Alam, AC to SC20
For the BISCOMAUN	:	Mr. Vikas Kumar, Adv. Mrs. Aradhana Kumari, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 11-07-2025

Heard Learned Counsel for the petitioner, learned
counsel for the State and Learned Counsel for the
BISCOMAUN.

2. Learned Counsel for the petitioner submits that the
present writ application has been filed with the following



reliefs:-

A) For quashing the memo No. Est/128/M/225 dated 13.04.2013 issued by the Managing Director, BISCOMAN (Respondent No. 3) which the by petitioner has been given Compulsory Retirement from the post of Assistant Store Manager, BISCOMAN.

(B) For quashing the entire departmental proceeding and memo no. EST/128/M/162 dated 10.04.2013 issued by Special Officer (Administration) BISCOMAN.

(C) For directing the respondents to pay full salary of the suspension period and other admissible and consequential dues to the petitioner.

(D) For directing the State respondent no.-1 and 2 to direct the BISCOMAUN authorities to take final decision in the matter of petitioner.

3. Counsel further submits that the action has been taken under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as CCA Rules, 2005), which is apparent from the order impugned.

4. Counsel for the BISCOMAUN submits that in the light of the various decision passed by this Hon'ble Court *i.e.*, order dated 22.07.2024 passed in C.W.J.C. No.16990 of 2022, this writ petition is not maintainable against the BISCOMAUN.



5. Upon perusal of the said order, it transpires that this Court has made a series of discussions contained in paragraph Nos.4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 which states as follows:-

4. The petitioners sought a direction from this Court to ensure their post retiral benefit(s) in view of the decision of the Hon'ble Supreme Court in Ashok Kumar Ram v. The State of Bihar and Others [Special Leave Petition (Civil) Diary No. (s) 6011 of 2018] arising out of judgment dated 12.07.2017 in M.J.C. No. 5719 of 2013, passed by the learned co-ordinate Bench of this Court and in view of Memo No. 796 dated 02.02.2018 relating to scheme formulated for Employees of Board/Corporation/Society issued by the Department of Finance, Government of Bihar, Patna.

5. A preliminary objection was raised with regard to the maintainability of the writ petition in view of the various judgments rendered by the different Benches of this Court as well as the learned Division Bench of this Court in L.P.A. No. 983 of 2023 and other analogous cases. Heavy reliance has also been placed on a judgment passed by the Special Bench of this Court in the case of Organiser Dehri CD & CM Union vs.State of Bihar and Others [2014 (1) PLJR 695].

6. The learned counsel for the BISCOMAUN adverting to the judgments noted hereinabove, vigorously contended that the BISCOMAUN neither being a State under Article 12 of the Constitution of India nor discharging any public function, a writ petition under Article 226 of the Constitution is not maintainable.



7. The learned counsel for the BISCOMAUN also placed reliance on a judgment rendered by a Division Bench of this Court in the case of *The Chairman Bihar State Co-operative Marketing Union Employees Provident Fund Trustee Committee and Another v. Ram Swarth Singh and Others* [LPA No. 119 of 2015]. The learned Division Bench highlighting the dictum of the Special Bench of this Court in *Organiser Dehri CD & CM Union* (supra) held that a Body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. When the Rules contemplate contribution from the employer and employee, the BISCOMAUN is not performing a public function as such collection of Provident Fund Dues is not for the benefit of public or a section of public, but for its own employees; thus does not perform public function.

8. The learned Division Bench while holding that the invocation of jurisdiction against BISCOMAUN is not tenable, in paragraph-8 of its judgment observed as follows:

"8. The Special Bench in *The Organizer, Dehri C.D. & C.M. Union Limited's* case (supra) returned a finding that BISCOMAUN is not performing any public duty or public function for and on behalf of the Government. The cumulative effect is that no deep and pervasive control nor public duty or public function is being performed by the BISCOMAUN and the writ application is not maintainable."

9. The learned counsel for the BISCOMAUN further drew the attention of this Court to a decision rendered in *The Managing*



Director v. The State of Bihar and Others [L.P.A. No. 983 of 2023] and other analogous cases, wherein the learned Division Bench of this Court has been pleased to set aside the order of the learned Single Judge and allowed the appeal by holding that "the fact remains that by the judgment of the Special Bench cited above, there can be no writ issued against a Cooperative Society. We find absolutely no reason to sustain the impugned judgment of the learned Single Judge and we set aside the same, allowing the appeal and rejecting the MJC petition."

10. In the afore-noted case, the employees of the BISCOMAUN placed heavy reliance on a judgment of the Hon'ble Apex Court in Ram Chandra Singh. However, the learned Division Bench with all respect to the pronouncement of the Apex Court held as follows:

"8. Be that as it may, we are of the opinion that the judgment of the Hon'ble Supreme Court does not, at all apply. We cannot discern the facts of the case from Annexure-13 judgment of the Hon'ble Supreme Court, in the Special Leave to Appeal which is produced at Annexure-13 in the writ petition. Ram Chandra Singh had filed the Special Leave Petition in which the State prayed before Hon'ble Supreme Court for making payment of the dues of the petitioner in twelve equal installments which was directed to be made in eight equal installments with interest @ 6 per cent per annum. There is no declaration of law in the judgment and it does not have the sheen of a binding precedent. Without reference to the facts, there cannot be a direction issued as was done by Hon'ble Supreme Court, which was on specific prayer made by the State to have a quietus to the issue. In such circumstances, neither the order of



the Hon'ble Supreme Court nor the decision of the Division Bench, in the writ petition filed by the petitioner himself, come to the aid of the petitioner."

11. On the other hand, the learned counsel for the petitioner placed reliance on a judgment rendered by a Division Bench of this Court in Rabindra Nath Mishra v. The State of Bihar and Others [L.P.A. No. 1024 of 2018], wherein the respondents were directed to make payment of post retiral dues of the petitioner along with the statutory interest. It is also contended that the amount of retiral dues of the petitioner is the property guaranteed under Article 300A of the Constitution of India and for that the petitioner has remedy under Article 226 of the Constitution of India.

12. Reliance has also been placed on a judgment rendered by the Hon'ble Supreme Court in Tukaram Kana Joshi and Others through the Power of Attorney Holder v. M.I.D.C. and Others [Civil Appeal No. 7780 of 2012 arising out of SLP (C) NO. 2418 of 2012]. It is also the contention of the learned counsel for the petitioner that different Benches of this Court in various cases have directed the BISCOMAUN to ensure payment of post retiral dues chronologically in accordance with the date of retirement of its employee(s).

13. This Court has carefully heard the rival contentions of the parties on the point of maintainability of the writ petitions.

14. Having gone through the judgments/orders cited by the respective counsels, this Court finds that some of writ petitions were entertained by different Benches and certain directions were issued for payment of retiral benefits. But, admittedly, in those cases, the issue



of maintainability was not addressed. Reliance of the petitioners on the order of the Hon'ble Supreme Court in the case of Ashok Kumar Ram v. The State of Bihar and Others, Special Leave Petition (Civil) Diary No. (s) 6011 of 2018 is arising out of judgment and order dated 12.07.2017 passed in MJC No. 5719 of 2013, wherein the Hon'ble Supreme Court having found the direction of this Court to ensure payment of outstanding amount, directed the BISCOMAUN to pay the amount along with interest, failing which it will be a case of aggravated contempt.

6. From the above mentioned paragraphs of the said order, it has been held finally that the BISCOMAUN is not a State defined under Article 12 of the Constitution of India and nor performing any public duty or public function for and on behalf of the government. The cumulative effect is that no deep and pervasive control nor public duty or public function is being performed by the BISCOMAUN and therefore, the writ application is not maintainable.

7. In the light of the consistent decision of this Hon'ble Court mentioned above, this Court restrains himself for issuance of any writ in this matter against the BISCOMAUN. But on other hand, it transpires to this Court that the orders which petitioner has challenged, shall be considered under the CCA Rules, 2005 as the statutory appeal is available for the petitioner.



8. Hence, the present writ petition is hereby dismissed granting liberty to the petitioner to avail his remedy of the statutory appeal before the appropriate authority under CCA Rules, 2005.

9. Delay, if any, in filing the appeal, is hereby directed to be condoned.

10. With the aforesaid liberty, the present writ application stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

