

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11567 of 2017

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Rajendra Mishra Son of Late Ram Sihasan Mishra, Resident of Village- Baad,
P.O.- Baad, Police Station- Karakat, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Main Secretariat, Patna.
2. The Commissioner and Secretary, Department of Social Welfare (Previously known as Welfare Department) Government of Bihar, Main Secretariat, Patna.
3. The Director, Integrated Child Development Service, Indira Bhawan 2nd Floor, Boring Canal Road, Pat
4. The Commissioner and Secretary, Finance Department, Government of Bihar, Main Secretariat, Patna.
5. District Program officer, Patna.
6. District Program Officer, Gaya.
7. District Program Officer, Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajib Ranjan Jha, Advocate Mr. Ashish, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal- SC-3 Ms. Neelam Kumari, AC to SC -3

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
C.A.V JUDGMENT

Date : 17-01-2020

In the present writ application, the petitioner seeks a writ of certiorari for quashing a Memo No. 801 dated 26.03.2011 issued by the Secretary, Social Welfare-cum-Director, I.C.D.S. whereby and whereunder the benefits of the 6th pay revision which have been provisionally granted to him has been withdrawn and a direction has been issued for recovery of sum of Rs. 1,03,429/- be recovered from the petitioner as the same has been granted to him on account of wrong fixation of



salary.

2. Learned counsel for the petitioner submits that the petitioner along with others was appointed on the post of Assistant vide office Order No. M/3082 dated 31.01.1985 in the Biscomaun Rice Mill Project, Bikramganj, Rohtas. Subsequent to the decision of the State Government to wind up non-viable Boards and Corporation, such employees, who have been declared surplus, were adjusted against the vacancies available in different departments of the State Government and, accordingly, vide Memo No. 7309 dated 06.12.1996, the petitioner was sent on deputation in the I.C.D.S., Directorate under the Welfare Department. The petitioner submitted his joining on the post of Assistant in the I.C.D.S., Directorate on 13.12.1996 but such employees of the Biscomaun, who were sent were made to accept the lower post and lower pay scale which necessitated the filing of C.W.J.C. No. 10016 of 2007 which was disposed off on 06.04.2011 with a direction to the respondents to pass necessary order of absorption. The operative portion of the order passed in C.W.J.C. No. 10016 of 2007 is extracted hereinunder :-

“Annexure-5 is the advertisement published for filling up the vacant posts in the I.C.D.S. project, from surplus employees



of the different Boards and Corporations. In response to this, petitioners had applied and they were selected and appointed on deputation basis. Annexure- 6 series which is their appointment order is indicative of the fact that these employees will be governed by the same service conditions/rules, which is applicable in case of Government employees. They will also be entitled for same benefit and relief, which is available to State Government employee. They were also not allowed the deputation allowance. These Annexures are sufficient to show that the word “Deputation” used in Annexure-1 or Annexures 5 and 6 is not simple “Deputation”, but it was deputation with a clear stipulation that their services will be absorbed. The respondents themselves have absorbed service of similarly situated employees as per Annexure 7 series and Annexure- 8. Now, they cannot deny same benefit to the petitioners, who have worked for such a long time with legitimate expectation of absorption. Petitioners have annexed the order passed in C.W.J.C. No. 8050 of 2003, Annexure- 10, whereby in the similar circumstance, surplus employees of BISCOAUN were directed to be absorbed. Counsel for the petitioners have also brought before this court the order passed in a batch



of Letters Patent Appeals, preferred by surplus employees of BISCOMAUN and other Boards, Corporations, who were going to be repatriated to the parent Department and whose Writ Applications have been dismissed by the Single Judge. All these Letter Patent Appeals were allowed with a direction to the Respondents to absorb their services, permanently in the Department, they were working on deputation, subject to this condition that they were brought on deputation, prior to cut off date off 16.11.1999. The State Government preferred SLP before the Hon'ble Supreme Court against the orders passed in all these LPAs and the same was dismissed.

I find that all petitioners who are members of petitioner no. 1 "Association" as well as other petitioners, stands on similar footing as appellants of the LPA No. 608 of 2006 and its analogous appeals, as such entitled for similar relief. Accordingly, the Respondent Nos. 2, 3, 4 and 5 are directed to pass necessary order of absorption of all these petitioners. None of the petitioners shall be repatriated to those defunct Boards, Corporations, Public Sector Undertakings/Enterprises, which were their parent department, petitioners will be allowed to superannuate from the posts, they



are working. They will be paid their salary, pensionary benefits, remaining on the same post.

With these directions/observations, this writ application stands disposed of.”

3. The petitioner along with others were absorbed in the I.C.D.S. Directorate on the post of Assistant and subsequent thereto he was also granted benefits of 6th pay revision. However, the District Programme Officer issued a letter dated 19.01.2011 stating therein that the benefits of the 6th pay revision has been granted on the basis of the application made by the petitioner himself whereas the same has not been granted to any other employee and, hence, the excess amount of Rs. 1,03,429/- is recoverable from him. The petitioner then filed a several representations on 19.05.2014, 10.07.2014, 31.07.2014, 01.04.2015 and 22.04.2015 addressed to the Director, I.C.D.S., Directorate with a request to consider his case and refund the amount deducted from his salary, but the respondents did not pay heed to his request and having failed in all his efforts, the petitioner has filed the present writ application seeking appropriate relief for grant of 6th pay revision and for refund of the amount which has been recovered from him.

4. A counter affidavit has been filed on behalf of the



respondent no. 3, namely, the Special Officer, I.C.D.S. Directorate, Bihar, Patna wherein it has been contended that the order impugned as contained in Annexure-4 has been passed, is wholly legal and valid as the petitioner's pay scale has been wrongly fixed and, therefore, the Secretary Social Welfare-cum-Director, I.C.D.S. has ordered to recover the amount paid in excess and to fix the pay scale of the petitioner in the appropriate pay scales.

5. It was further submitted by the respondents that petitioner's parent organization is the Biscomaun and as per letter of the Managing Director, Biscomaun bearing Letter No. 952 dated 10.08.2017, the 6th pay revision is not being paid to employees of Biscomaun and instead they have been paid the 5th unrevised pay scale. As such, since the petitioner has been placed on deputation, he is entitled only to the pay scale admissible to him of the parent organization. It was, thus, contended by the respondents that as per terms of the deputation, the petitioner cannot claim that he is admissible to be paid the 6th pay revision scale admissible to the State Government employees. It was, thus, submitted that the contention of the petitioner is devoid of any merit and is fit to be dismissed.



6. Responding to the aforementioned submissions of the respondent - State of Bihar, the writ petitioner has drawn the attention of this court to an order dated 05.09.2013 contained in I.C.D.S. Letter No. 4547 whereby 59 such employees, who have been placed on deputation with the I.C.D.S. and were functioning were given the benefit of age relaxation and were absorbed/appointed on the respective posts stated against their name on the terms and conditions as indicated in Column – 2. On perusal of the terms of appointment stated at Column -2 indicates that as per Clause – ‘Ka’ after absorption such employees would avail the benefit of the scale indicated and as per Clause – ‘kha’ they would be eligible for grant of the new pension schemes enunciated in Finance Department Resolution No. 1964 dated 31.08.2005. It was further indicated at Clause – ‘Ga’ of Clause – 2 that such absorbed and appointed employees would have the seniority as per the letter no. 15784 dated 26.06.1972 issued by the Department of Personnel and Administrative Reforms and as per the Clause ‘Gha’ they would be given the benefit of promotion from the date they were upon consideration of the date from which they were taken into service.

7. A supplementary counter affidavit has also been



filed by the Director, I.C.D.S. who has stated that pursuant to Resolution No. 3803 dated 29.07.2013, the present petitioners, who were deputed in the I.C.D.S. have been absorbed after acceptance of offer and no objection by the parent organization on vacant Class – III & IV posts taking into consideration the order passed in C.W.J.C. No. 10016 of 2007 which came into effective from the date of the issuance of Memo No. 4547 dated 04.09.2013.

8. It was, however, contended that by order dated 25.02.2011 passed in L.P.A. No. 243 of 2018 in a similar matter relating to deputationists, the Hon'ble Jharkhand High Court took a different view of the matter and held that the deputationist were not substantive employees of the State in terms of Section 74 of the Bihar re-organization Act and since they were never absorbed the Jharkhand High Court took a different view stating that the Patna High Court judgement though upheld in the Hon'ble Supreme Court in SLA was not binding on the Jharkhand High Court as the SLP was dismissed in limine. The matter, however, traversed to the Apex Court in Civil Appeal No. 1442 of 2015 with 1443 of 2015 and the Supreme Court by order dated 03.02.2015 upheld the decision of the Jharkhand High Court and distinguished it from the case



of the State of Bihar as the decisions with regard to the petitioners/appellants therein did not reveal that there is anything on record to suggest that the approval was granted by the Co-ordination committee of the Economic Policy of the Cabinet for absorption of the employees of the BISCOMAUN. It was also noted that the matter was never placed before the Cabinet nor any approval was taken or any scheme notified by the State of Bihar for absorption of employees of the BISCOMAUN in the service of the State of Bihar. As such, in the absence of any such policy decision of the State Government or scheme framed for absorption of the employees of BISCOMAUN in the service of the State of Bihar, the order of deputation of one Arun Kumar Singh and Avinash Vastayan & others cannot be termed as an appointment in the services of the State of Bihar. It was, thus, submitted by the counsel for the State that the Apex Court had on consideration of all facts and circumstances dismissed the SLP and had also upheld the judgement of the High Court of Jharkhand in the following terms :-

“ 18. In view of the above findings, we uphold the judgment and order dated 25.02.2011 passed by the High Court of Jharkhand at Ranchi in Letters Patent Appeal No. 243 of 2008 and set aside the impugned judgment dated 19.04.2010 passed in Letters



Patent Appeal No. 608 of 2006 etc. in so far as it relates to Arun Kumar Singh and Avinash Vatsyayan and Others.”

9. It is on the basis of such situation that learned counsel for the State contended that the very basis of the order by which the petitioners were absorbed and appointed has now been set to naught as the Apex Court has set aside the impugned order dated 19.04.2010 passed in L.P.A. No. 608 of 2006 in so far as it relates to Arun kumar Singh & Avinash Vastsayan & others.

10. Learned counsel for the State taking cue from the words that LPA NO. 608 of 2006 has been set aside now seeks to contend that as the very basis of the order passed in C.W.J.C. No. 10016 of 2007 no longer holds good ground and the petitioner cannot be granted any relief.

11. Learned counsel for the State has, however, also annexed Annexure- B which is letter dated 02.02.2018 contained in letter No. 796 wherein a policy decision has been taken and at Clause – 5 (kha) (i)’ it has been stated as follows :-

“(i) राज्य के अंतर्गत बोर्ड का गठन एवं उसका विघटन अधिनियम के तहत किया जाता है। विघटन के पश्चात् बोर्ड में कार्यरत कर्मियों का समायोजन, राज्य



सरकार के विभागों/कार्यालयों में उनके द्वारा बोर्ड में धारित पद के वेतनमान/समकक्ष वेतनमान में होगा। समायोजन की तिथि से वे सरकारी सेवक माने जाएंगे तथा ऐसे कर्मियों को सरकारी सेवकों के लिए अनुमान्य सुविधाएँ समायोजन की तिथि से देय होगी।”

12. However, despite such a policy decision, learned counsel for the State submits that the benefits of 6th pay revision at par with government employees of the State of Bihar cannot be availed of by the petitioner, who was an employee of the Biscomaun and was on deputation in the Welfare Department, Government of Bihar. He, accordingly, submits that the petitioner is not entitled to any relief and the writ petition be dismissed.

13. I have heard learned counsel for the petitioner and learned counsel for the State at length and perused the records of the case. It appears that pursuant to the order passed by this Court, the State Government took a conscious decision and after taking the consent of the parent department (Biscomaun) which is admitted by the respondents in their own counter affidavit, the petitioner's service along with others was absorbed and he was duly appointed along with other employees of the Biscomaun in the Department of Welfare under the I.C.D.S. scheme. It further appears that the respondents are now



trying to take refuge of the order passed by the Apex Court in the case of some employees of the Biscomaun who had been deputed in the State of Jharkhand but whose case could not be treated with similar parameters as the employees of the State of Bihar. The reason for distinguishing the case of the present petitioner is that while the present petitioner was duly absorbed after consent from the parent department in the State of Bihar, the employees in the State of Jharkhand had not been given the same facilities and, their services were never absorbed. When the matter traversed up-to the Apex Court, the Court distinguished the cases and the order passed in LPA No. 608 of 2006 was set aside to the extent of its application in the case of Avinash Vatsyayan & others and also the case of Arun Kumar Singh. This order, however, in the considered opinion of the court cannot be used as a tools/device by the respondents at this stage now, especially that even thereafter, vide Annexure- B the State Government has framed a conscious policy vide Annexure- B to absorb employees of different Boards and Corporation and Societies as recently as to 02.02.2018.

14. It, thus, appears that the decision of the State Government to deprive the petitioner of his pay scale by resorting to a process of recovery is wholly unreasonable and



cannot be sustained especially in view of Clause -10 (i). Thus, in the opinion of this Court, the petitioner was also entitled to the scales which were permissible to other government employees from the date of his absorption/appointment on the post indicated against his name from the date he was so appointed. As this petitioner was duly absorbed as an Employee of the State of Bihar, he ceased to be an Employee of the Bisco maun and, therefore, the contention that the petitioner cannot avail the benefit of 6th pay revision is untenable and accordingly, rejected.

15. Accordingly, and for the aforementioned reasons, the writ application stands allowed and the order dated 26.03.2011 as contained in Annexure- 4 is quashed. The respondents are further directed to refund the amount recovered from the salary of the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	
CAV DATE	08.01.2020
Uploading Date	21.01.2020
Transmission Date	

