

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 290 of 2018**

Shatrughan Pathak Petitioner

Versus

- 1.The State of Jharkhand
- 2.The State of Bihar through the Managing Director, Biscoman, P.O. West Gandhi Maidan, P.S. Patna, District-Patna
- 3.The Chairman Biscoman, P.O. West Gandhi Maidan, P.S. Patna, District-Patna
- 4.The Secretary, Biscoman, P.O. West Gandhi Maidan, P.S. Patna, District-Patna
- 5.The Divisional Range Officer, Biscoman Cooperative Bank Compound, near State Bank, P.O., P.S. & District-Hazaribagh

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Saurav Arun, Adv

For the Resp, Nos. 2 to 5 : Mr. Saurav Shekhar, Adv

Mr. Binit Chandra, J.C. to G.A. Bihar

For the Resp-State : Ms. Sunita Kumari, A.C. to Sr. S.C.-II

12/Dated: 23rd February, 2024

Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying for a direction upon the respondents to pay admitted arrear of salary of the petitioner to the tune of Rs.4,23,833/- which has not been paid to the petitioner till date i.e. w.e.f. 01.11.1996 to 31.08.2003.

3. During course of the hearing on 21.12.2023, the following order was passed by this Court.

"Heard learned counsel for the parties.

2. Mr. Saurav Arun, learned counsel for the petitioner submits that the instant writ application has been preferred by the petitioner praying for a direction upon the respondent authorities to pay admitted arrear of salary of the petitioner to the tune of Rs. 4,23,833/- which has not been paid to him till date. He further submits that a counter affidavit has been filed raising a preliminary objection that since the respondent Nos. 2 to 5 is a society, as such Writ is not maintainable. He further submits that now the law is no more res integra that in certain circumstances the Writ is maintainable, inasmuch as, the effort of the government should be to ever expand the scope of constitutional power of the Courts to bring within the reach of Article 226 of the Constitution all such actions of public authority which violates the basic tenet of injustice and misuse of authority or violation of rule of law. He further submits that though BISCOMAN is a society but in which the government is also a party.

3. So far as counter affidavit has been filed by BISCOMAN is concerned, it has not been denied that whether this petitioner is entitled for the salary or not, as such, this Court is of the view

*that since the prayer of the petitioner has not been denied and only technical objection has been raised by the respondent Nos. 2 to 5 regarding maintainability, as such, *prima facie* it appears that the writ may be entertained for the limited purpose.*

4. Consequently, looking to the overall facts and circumstances coupled with the prayer made in the instant application interest of justice demands that respondent No. 4 should appear before this Court so that some amicable settlement could be ascertained instead of litigating it further by deciding the question as to whether the Writ is maintainable or not. As such let respondent No. 4 should appear before this Court on the next date of hearing by either mode (Physical/Virtual) and explain the situation as well as the facts towards the entitlement of this petitioner with regard to arrear of salary.

5. Put up this case on 05.01.2024."

Pursuant to the said order the respondent no.4 appeared on 05.01.2024 and the following order was passed.

"Mr. Lalu Singh, respondent No.4 is present before this Court through virtual mode. He fairly submits that the petitioner of this case is at serial no. 132 and the Hon'ble Patna High Court has directed to pay the amount serially in order of seniority and certainly the economic position of respondent BISCOMAN is not healthy as such it may take some more time for payment of the admitted dues to the petitioner, as such the respondent BISCOMAN may be given some more time.

Having regard to the fair submission made by the respondent No.4, let an affidavit be filed by the respondent No.4 before the next date of hearing indicating the aforesaid statement and expected date of payment the admitted dues to this petitioner. Put up this case on 02.02.2024.

The personal appearance of respondent No.4 is dispensed with for the time being.

Pursuant to that, a supplementary counter-affidavit has been filed by respondent no.4 stating therein at para 3 and 7 as under:-

"3. That it is submitted that the petitioner retired on 31.08.2003 and after retirement following payment have been made to him under different heads:-

(a) Group Insurance- Rs.47,721/- vide Cheque No.- 081066/26/06/2008

(b) Provident Fund-Rs. 1,14,371, vide Cheque No.- 050081/05.01.2004 & Rs. 20,444/- vide Cheque No. 575081/27.04.2007 (Total Rs.1,34,815/-)

(C) Gratuity & Leave Salary-Rs.57,896.87/-vide Cheque No.- 081067/26.06.2008

(d) Due Salary- In light of different orders and scheme formulated by the Hon'ble High court of Patna will be paid in Chronological Order as per seniority and availability of fund.

Serial Number of petitioner in chronological list-131 which is available in Public Domain on the official website of BISCOMAUN i.e. WWW.BISCOMAUN.CO.IN

7. That, it is relevant to State that BISCOMAUN was facing financial stringency, as such moved before this Hon'ble Court in L.P.A. No. 778 of 2007 and this Hon'ble Court vide its order dated 21.04.2008 was pleased to direct the BISCOMAUN

Administration to pay dues of its retired employees in chronological basis, as and when the fund is available."

4. Learned counsel for both the parties fairly submits that several writ petitions were filed for the same and similar prayer by other respective employees and it is true that BISCOMAN is passing through financial stringency and accordingly it has decided to pay the retiral dues to its retired employee on a chronological basis, as such the instant writ application may be disposed of with a direction to the concerned respondent to redress the grievance of the petitioner as per their planning i.e. to pay the benefits as per chronological basis and the petitioner is at serial no. 131/133, as such they may fulfil their promise as made in the supplementary counter-affidavit.

5. Having regard to the facts of the case and the submissions made by learned counsel for the parties and the specific averments made in the supplementary counter-affidavit, this Court is of the view that certainly there is a financial constrain and the respondents have adopted a measure for paying the dues to its retired employees on a chronological basis, as such interest of justice demands that the respondents should pay to these petitioners also as per their financial planning and availability of fund and strictly in compliance to the averments made in the para 11 of the supplementary counter-affidavit.

6. Accordingly, the instant application stands disposed of.

(Deepak Roshan, J.)

Amardeep/