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DEVENDRA KUMAR SINGH

v

ADMINISTRATOR, BIHAR COOP. MKT. UNION LTD. AND ANR.

APRIL 25, 2006

B

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

Service Law:

C

Public Sector Undertaking—Payment of salary to employees—Denial of—Held: If State fails to comply with its constitutional obligations, it must take appropriate steps so that employee should not be deprived of his legal rights to obtain salary—Division Bench of the High Court erred in reversing the order of the Single Judge for payment of salary to the employee till closing down of the employer organization in terms of the directions of the Supreme Court in a matter on the similar issue—Constitution of India, 1950—Article 12.

D

Constitution of India, Article 226:

E

Writ jurisdiction of High Court—Held: It cannot be enlarged—If any cause of action arises therefor, it would be open to the employee to ventilate its grievances before an appropriate Forum.

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The appellant, an employee of the Bihar State cooperative Marketing Union Limited (BISCOMAUN) had not been paid his salary since January, 1996. He filed a writ petition before the Patna High Court. Single Judge of the High Court by order dated 27.9.2000 directed the employer for payment of salary to the Appellant. Aggrieved, the employer preferred a Letters Patent Appeal thereagainst, which was allowed by a Division Bench of the High Court reversing the order of the Single Judge. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1.1. The legal right of the appellant-employee to obtain salary has not been disputed. An order which may not be executed easily is distinct and different from declaration of a legal right. While issuing a writ, the Court is not concerned as to whether there is an *inter se* dispute between

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BISCOMAUN, the Public Sector Undertaking and the State of Bihar as regards their respective liability. [284-G] A

1.2. The Single Judge of the High Court was entirely correct in observing that if a State within the meaning of Article 12 of the Constitution of India is not in a position to comply with its constitutional obligations, it must try to find out a way itself to take appropriate steps in that behalf but the same would not mean that the appellant could have been deprived of his legal right to obtain salary. [284-H; 285-A] B

Kapila Hingorani v. State of Bihar, [2003] 6 SCC 1, referred to.

1.3. The scope of the writ petition could not be enlarged. If any cause of action arises therefor, it would be open to the concerned employees to ventilate their grievances before an appropriate forum. In the light of the reasons as aforementioned, the judgment of the Division Bench of the High Court is wholly unsustainable, hence set aside. [285-E] C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7659 of 2002. D

From the Judgment and Final Order dated 19.7.2001 of the High Court of Judicature at Patna in L.P.A. No. 401/2001.

Sunil Kumar, Anita Kanungo and Himanshu Shekhar for the Appellant. E

Dinesh Dwivedi, Kailash Vasdev, S.K. Sinha, Ritu Ras Biswas, Gopal Singh and B.B. Singh (NP) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. The Appellant herein is an employee of the Bihar State Cooperative Marketing Union Limited (for short "BISCOMAUN"). He had not been paid his salary from the month of January, 1996. He filed a writ petition before the Patna High Court. No dispute was raised as regard his legal right to receive salary or the quantum thereof. On the aforementioned premise, a learned Single Judge of the High Court by an order dated 27.9.2000 while directing payment of salary to the Appellant herein observed: F G

"This Court is constrained to note here that admittedly the respondents are not in a position to pay even salary to the employees since October, 1995, such institution/ organization must not exist. In my opinion, all such institutions/ organizations must be immediately closed H

A down by resorting to winding up proceeding in the light of the Full Bench decision of this Court in the case of *Mani Kant Pathak & Ors. v. The State of Bihar*, reported in (1997) (1) PLJR 664.

B However, in the counter affidavit, it is not even indicated that any such step has been taken, so far. Accordingly, this writ petition is allowed with cost of Rs. 2000/- to be paid by the Head of the Organisation, namely, the Administrator from his pocket to the petitioner with all his dues within two weeks from the date of receipt of communication of this order, failing which he shall not draw his salary and other allowances till the order is complied.”

C BISCOMAUN preferred a Letters Patent Appeal thereagainst. A Division Bench of the High Court by an order dated 19.7.2001 set aside the said judgment and order of the learned Single Judge holding:

D “The BISCOMAUN is running in loss. It has no fund even to meet day-to-day expenses and the salary is not being paid to its employees. Even the Administrator has been appointed on part time basis. The fact that whether the State Government will take necessary steps for winding up of the said Society or not, it is for them to decide and on that ground direction cannot be made for payment of salary to respondent no. 1 because it is an admitted position that no fund is available to the BISCOMAUN. Therefore, no futile writ can be issued and thus the direction issued by the learned Single Judge for payment of salary and the cost awarded to the Administrator is set aside. However, it is made clear that as and when the fund will be available, the salary of the respondent along with other employees shall be paid.”

F The Appellant is, thus, before us.

G We do not appreciate the approach of the Division Bench. A citizen knocks the doors of the High Court for obtaining relief to which he is entitled to. In this case, the legal right of the Appellant to obtain salary has not been disputed. An order which may not be executed easily is distinct and different from declaration of a legal right. While issuing a writ, the court is not concerned as to whether there is an *inter se* dispute between BISCOMAUN and the State of Bihar as regards their respective liability.

H The learned Single Judge, in our opinion, was entirely correct in observing that if a State within the meaning of Article 12 of the Constitution

of India is not in a position to comply with its constitutional obligations, it must try to find out a way itself to take appropriate steps in that behalf but the same would not mean that the Appellant could have been deprived of his legal right to obtain salary. A

It, however, appears that by an order dated 29.4.2002, a Division Bench of this Court directed the State of Bihar to pay salary for one year each to the employees of BISCOMAUN. B

The State, however, denies and disputes its right to pay salary to the employees of BISCOMAUN.

Mr. Sunil Kumar urges that this Court may issue appropriate directions to the State of Bihar to pay salary to all the employees of BISCOMAUN. We cannot accede to such a prayer for more than one reason. Firstly, because it is not a case where this Court has the requisite materials to issue such general direction. Secondly, no case has been made out by the employees of BISCOMAUN to attract the law laid down by this Court in *Kapila Hingorani v. State of Bihar*, [2003] 6 SCC 1. C D

In this situation, we do not intend to enlarge the scope of the writ petition. If any cause of action arises therefor, it would be open to the concerned employees to ventilate their grievances before an appropriate forum. We, however, for the reasons aforementioned, are of the opinion that the judgment of the Division Bench of the High Court is wholly unsustainable. It is set aside accordingly. The appeal is allowed. The Respondent No. 2 shall also bear the cost of this appeal. Counsel's fee assessed at Rs. 5000/-. E

S.K.S.

Appeal allowed.