

**(2007) 02 PAT CK 0151**  
**In the Patna High Court**

|                           |    |            |
|---------------------------|----|------------|
| Madhur Rajak and Another  |    | APPELLANT  |
|                           | Vs |            |
| State of Bihar and Others |    | RESPONDENT |

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**Date of Decision :** 22-02-2007

**Acts Referred:**

Constitution of India, 1950 — Article 21

**Citation :** (2007) 114 FLR 607 : (2007) 2 PLJR 814

**Hon'ble Judges :** Ajay Kumar Tripathi, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

Ajay Kumar Tripathi, J.—Heard Counsel for the parties.

There are two petitioners before this Court. Both were working as Night Guards with the respondent-Bihar State Co-operative Marketing Union Limited (BISCOMAUN). Though they were supposed to be employees of a model employer, they have virtually been reduced to be a level of being indigent. It is well known now, that BISCOMAUN is not paying the current salary as well as other pending salary since the year 1995. This is the status of employees who are in service. For those who have retired the situation is much worse because they have been denied benefit of salary as well as their retiral dues which had already accrued to them. Though pension has already been held to be by various Courts is no longer a bounty but a rightful claim of every employee, still the same is not being paid.

2. The respondents in order to lighten their burden of a recurring kind in wages and salary came out with a scheme or offer where the current employees working with them would voluntarily retire. This scheme, I am sure must have been worked out with certain amount of planning and homework because the organisation ought to know that in case they gave an offer of such kind a certain percentage of its employees would surely volunteer to opt out of the Organisation.

3. Based on this offer both the petitioners filed their application on 14.7.2003, and opted for voluntary retirement as they were in dire need and it was getting very difficult for them to take care of their family as well as themselves due to recurring non-payment of their regular salary. After the petitioners filled in the requisite forms and tendered the same to the respondents the respondent authorities vide their order dated 1.4.2004 communicated their acceptance which is contained in Annexures-5 and 6. Once this order/acceptance of the respondents was communicated to them, the petitioners thought that their miseries would come to an end but it was not to be. The petitioners thereafter have brought on record the various letters and correspondences which they have been making with the respondents for payment of their rightful dues which accrued to them by virtue of acceptance of their voluntary retirement. When nothing emerged over these years, the petitioners had no option but to file a writ application. The writ application was filed in the year 2004, however, the case finally came to be taken up only in January 2007.

4. A counter affidavit thereafter came to be filed on 21.2.2007, which was sworn on 15.2.2007. A perusal of the counter affidavit shows total apathy as well as shocking state of affairs in so far as the respondents are concerned, This Court is disturbed because of the stand which has been taken in the counter affidavit The usual tongue in cheek reply is that we do not have the necessary funds with us to meet the obligations of the petitioners. This is not only shocking to the cafe science but also shows total callous attitude on the part of the respondents on matters and. issues of such kind.

5. The respondents by offering to its employees the option of voluntary retirement made a promise of kinds that in case the employees working with them agree to shorten their work span or service period, they will be paid their dues and may be they can live within their means thereafter. The question is whether after the said promise or offer having been made and duly accepted, is it open to them to file an affidavit after three years and say that we do not have the money to meet this obligation? To my mind the answer is a no. This action of the BISCOMAUN will not only be hit by the doctrine of estoppel but also legitimate expectation, leave alone Article 21 of the Constitution of India.

6. That being the position this Court has no option but to direct the respondent authorities to work out the liability of, these petitioners and pay the same within a period of. two months from today and failure on their part to meet his direction or obligation may give a cause to the petitioners to take such other appropriate steps which they think are available to them to implement this order.

This writ application is accordingly allowed with the above direction.