

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1233 of 2014

In

Civil Writ Jurisdiction Case No. 14661 of 2006

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Rajendra Prasad Singh, son of Late Bindeshwari Prasad Singh, resident of
Village and P.O.- Jaitpur, Police Station- Barahiya, District- Lakhisarai

.... Petitioner-Appellant.

Versus

1. The Union of India through the Secretary, Human Resources Development Department, New Delhi.
2. The Secretary, Human Resources Development Department, New Delhi
3. The Commissioner, Kendriya Vidyalaya Sangathan, New Delhi- 110067
4. The Joint Commissioner (Administration), Kendriya Vidyalaya Sangathan, New Delhi- 110016
5. The State of Bihar through the Secretary, Human Resources Development Department, Government of Bihar, Patna.

.... Respondents-Respondents.

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Appearance :

For the Appellant/s : Mr. Murari Prasad Sinha, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, GA-3
Mr. B. K. Pandey, AC to GA 3

For the K.V.S. : Mr. Kumar Ravish, Advocate

: Mr. G. K. Agrawal, Advocate

For the Union of India : Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

C.A.V. ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH)**

8 19-01-2015 The appellant herein, who retired from the service of

Kendriya Vidyalaya Sangathan, has filed the present appeal against

the order, dated 15.07.2014, passed in C.W.J.C. No. 14661 of

2006, whereby a learned single Judge of this Court has rejected

the appellant's prayer to count the period, served under the

Government of Bihar, for the purposes of calculating the

appellant's pension.

2. The writ petitioner-appellant was appointed as a

Teacher of English in Government Sarvodaya Multipurpose School, Korha, Purnia, on 02.03.1959. On his request, the writ petitioner-appellant was relieved from School service under State Government and joined Sainik School, Goalpara, Assam, on 16.06.1965.

3. The writ petitioner-appellant, on being selected for the post of Principal by the Kendriya Vidyalaya Sangthan, resigned from Sainik School, Goalpara, Assam, and joined, on 25.07.1977, as Principal, Kendriya Vidyalaya Sangthan.

4. Thereafter, the writ petitioner-appellant was promoted to the post of Education Officer, Kendriya Vidyalaya Sangthan, with effect from 19.08.1985 and he, finally, retired as Education Officer, Kendriya Vidyalaya Sangthan, on 31.01.1995.

5. As the writ petitioner-appellant had shifted to the service of Kendriya Vidyalaya Sangthan in the year 1965, the number of years for computation of pension, etc., was calculated with effect from the year 1965. The writ petitioner-appellant wanted that the services, which he had rendered under the State Government from 2nd March, 1959, to the year 1965, shall be reckoned for computing his pension and retiral benefits. The Union of India did not accede to the request of the appellant. This led to the filing of C.W.J.C. No. 14661 of 2006, by the appellant; but the writ petition was dismissed by order, dated 15.07.2014.



6. In the order, dated 15.07.2014, the learned single Judge has observed that the writ petitioner, first, rendered his services under State Government and then, in the Central Government and since he worked under two different employers, the services, rendered under the State Government, cannot be added to the services rendered under a Central Government Organization for the purposes of calculating pension. Furthermore, the learned single Judge has observed that the writ petitioner voluntarily resigned from the post of English Teacher, under the State Government, to grab the opportunity of being an English Teacher, in a Sainik School, under Central Government, which was more lucrative, and, hence, it was not a case that at the behest of the State Government, the writ petitioner joined the Central Government, when he was, on his own request, relieved from the service of the State Government to join the service of the Central Government.

7. The writ petitioner-appellant, being aggrieved, has preferred the present appeal.

8. Learned Counsel, appearing on behalf of the writ petitioner-appellant, submits that the respondents ought to have calculated the period spent under the State Government towards computing his total service for the purposes of pensionary benefits. In support of his submission, learned Counsel has relied



upon: (i) Circular of the Government of India, Department of Personnel and Administrative Reforms, Pension Unit, dated 29th August, 1984, and Office Memoranda, dated 7th February, 1986, 17th June, 1986, 30th October, 1986, and 20th March 1987 contained in Annexure-2 Series. He has also placed reliance upon a Division Bench order of Punjab & Haryana High Court, the order of the Supreme Court passed in Appeal (Civil) No. 1251 of 2008 and also the order passed, in Writ Petition (S) No. 4426 of 2005, by a Division Bench of Jharkhand High Court. Besides this, learned Counsel has also placed reliance upon Rule 14 (3) and Rule 26 (2) of the Central Civil Services Pension Rules, 1972.

9. In view of the Circular of the year 1984 and Office Memoranda, dated 7th February, 1986, learned Counsel for the appellant submits that the State Government was under an obligation to make contribution on *pro rata* basis towards its share of pension. Learned counsel submits that Bihar Government has agreed to contribute, on *pro rata* basis, a lump sum for payment of pensionary benefits of its employee, who may have joined services under the Central Government.

10. Learned Counsel for the Union of India submits that it has no objection in computing the total service rendered by the petitioner under the State Government provided that the State Government makes contribution on *pro rata* basis as per the 1984

Circular read with 1986 Circular of the Central Government referred to above.

11. Learned Counsel for the State Government submits that it has no specific instructions on the issues.

12. We have heard the counsel for the parties and perused the materials on record including the office Memo, dated 28.10.1984, of the Government of India, Department of Personnel and Administrative Reforms, as well as Office Memo, dated 7th February, 1986, of the Government of India. The Circular, dated 29th August, 1984, of the Government of India states that on detailed consideration, the President of India has been pleased to decide that the cases of Central Government employees going over to a Central Autonomous Body or *vice versa* and employees of the Central Autonomous Body moving to another Central Autonomous Body, will discharge its pension liability by paying a lump sum as a one time payment, the *pro rata* pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the Autonomous Body / Government, as the case may be. The Circular of Government of India, Department of Pension and Pension Welfare, dated 7th February, 1986, 17th June, 1986, 30th October, 1986 and 20th March, 1987 etc., extended the benefits to the employees of State Government/State Autonomous Bodies under the State

Government and also to the employees of the State Government subsequently absorbed and appointed in the Central Autonomous Bodies or *vice versa*. Paragraph 2 and 3 of the Circular, being relevant to the case at hand, quoted hereinbelow:

“2. In the circumstances explained above, it was felt that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees of the State Governments / State Autonomous Bodies / State Statutory Bodies, have been absorbed in the Central Autonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government servants and vice versa.

3. The question of extension of various benefits like counting of service, etc., in the cases of (i) employees of the Central Government absorbed in State Autonomous Bodies, and (ii) employees of Central Autonomous Bodies absorbed in State Governments and State Autonomous Bodies, and vice versa, has been considered in consultation with the State Governments. After careful consideration, the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms, O.M. No. 28/10/84-Pension Unit, dated 29-8-1984 [vide Order 6 (i) above]. The cases of Central Government servants appointed in State Governments and vice versa will continue to be decided as hitherto.”



13. As per 1986 Circular, the contribution has to be made in lump sum or *pro rata* basis, as the case may be, to which the State of Bihar is also, admittedly, a signatory. The aforesaid issue came for consideration before a Division Bench of Jharkhand High Court against an order of the Central Administrative Tribunal, Circuit Bench, at Ranchi, whereby a direction was given to the State Government to make payment of *pro rata* contribution towards pensionary benefits for the period for which the employee served under the State of Bihar before shifting to the Central Government. The Division Bench of Jharkhand High Court, relying upon the Circular of the year 1984 and 1986, upheld the order of the learned Tribunal that the petitioner was entitled to his pension contributed on total number of service under both the State Government and Central Government, which would be liable to make contribution on *pro rata* basis.

14. We fully agree with the view taken by the Division Bench of the Jharkhand High Court.

15. In case of **K. V. Sangathan & Anr. Vs. Raghunandan Bhargava & Ors.**, passed in **Civil Appeal No. 1251 of 2008**, the Supreme Court has observed that the Scheme, dated 29.08.1984, read with the scheme, dated 07.02.1986, require previous employer to accept the pension liability for the service in

accordance with the principles laid down in the official memorandum.

16. We need not, however, refer to Rule 14(3) and 26(2) of the Central Civil Services Pension Rules, 1972, relied upon by the learned counsel for the appellant inasmuch as the same would not be of much help to the appellant, because the Rule is silent on the issue of obligation of the State Government to make contribution for the period an employee had remained under its service. Independent of the Rules aforementioned, the writ petitioner-appellant, as already pointed out above, is entitled to the relief, which he had claimed.

17. In the result, this appeal succeeds. The order of the learned single Judge, dated 15.07.2014, passed in C.W.J.C. No. 14661 of 2006, is hereby set aside and the respondents, particularly, State of Bihar, is directed to process the appellant's case in the light of Circular of the year 1984 and 1986 to which the State of Bihar is one of the signatories.

(Samarendra Pratap Singh, J.)

I agree
I. A. Ansari, J:

(I. A. Ansari, J.)

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