

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20787 of 2012

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Shatrughan Baitha, Son of late Banshi Baitha, retired Clerk, District Consumer
Dispute Redressal Forum, Bettiah, West Champaran, resident of Sagar Pokhra,
Ujjain Tola, P.O. + P.S. Bettiah, District- West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Food and Consumer Protection, Bihar,
Patna
3. The Managing Director, Bihar State Food and Civil Supply Corporation, Sone
Bhawan, Birchand Patel Path, Patna
4. The Accountant General, (A and E), Bihar, Patna
5. The District Collector, West Champaran, Bettiah
6. The President, District Consumer Dispute Redressal Forum, Bettiah, West
Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nesar Ahmad, Advocate.
For the State : Ms. Silpi Keshri, AC to AAG-X
For the Resp. No. 4 : Mrs. Namrata Mishra, Advocate.
For the Corporation : Mr. Shailendra Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 23-08-2016

Heard learned counsel for the parties.

The controversy in the present writ application relates to
payment of Gratuity and pensionary benefits to the petitioner, who
superannuated on 30.06.2012, while being posted as Clerk in the
District of Bettiah in the service of the State Government.

Learned counsel for the petitioner submits that the
petitioner was initially appointed on the post of Watchman in the
Bihar State Food and Civil Supplies Corporation Limited (hereinafter
referred to as the 'Corporation') on 25.05.1976. Subsequently, by a



conscious decision dated 04.04.1997, the Government decided to absorb the service of the petitioner, along with many others, and thereafter by order dated 30.05.1997, he was posted as a Clerk in the District of West Champaran, Bettiah. He submits that he continued on the post till superannuation on 30.06.2016, but the period spent with the Corporation has not been taken into consideration for the purpose of computing his pensionary benefits and also the Gratuity of that period has not been paid.

From the counter affidavit filed on behalf of the State, the stand is that for the period the petitioner spent directly under the State Government, Gratuity would be paid by the State and with regard to the period spent under the Corporation, the same has to be paid by the Corporation. In support of such stand, the decision of the State Government, contained in Memo No. 237 dated 13.01.2012, has been relied upon. Copy of the same has been made Annexure-D to the counter affidavit.

In view of the aforesaid, the respondent no. 3 is directed to release the amount of Gratuity for the period the petitioner spent in the Corporation within three months from the date of production of a copy of this order upon him.

As far as taking into consideration the period spent in the Corporation for pensionary benefits, the Court finds substance in the



submissions of learned counsel for the petitioner for the reason that his services were absorbed under the Government and it was not a fresh appointment. Absorption clearly indicates that there is continuity maintained and there is no break in service. Further, the Corporation being an instrumentality of the State, the liability for the same cannot be shirked from. Thus, the period spent under the Corporation shall also be taken into consideration while computing the services of the petitioner for grant of pensionary benefits. The Court also finds that learned counsel for the petitioner has rightly placed reliance on the decisions in the cases of *Prem Prakash vs. The State of Bihar & Ors.* reported as 2000(3) All PLR 313; *Lala Devendra Prasad vs. The State of Bihar & Ors.* (CWJC No. 6123 of 1998) disposed off on 11.10.1999; *Priya Ranjan Sharma vs. The State of Bihar & Ors.* (CWJC No. 1745 of 2008) disposed off on 22.01.2010; *Dhananraj Prasad & Ors. vs. The State of Bihar & Ors.* (CWJC No. 9110 of 2008) disposed off on 06.08.2015 and *Jagdeo Prasad vs. The State of Bihar & Ors.* (CWJC No. 9277 of 2010) disposed off on 20.04.2011 are applicable in the facts and circumstances of the present case also.

The Court, thus, directs the respondent no. 5 to ensure that post retirement benefits are calculated accordingly and paid to the petitioner, except for the Gratuity on account of period spent under

the Corporation, within three months from the date of production of a copy of this order before him.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.08.2016
Transmission Date	