WEB COPY NOT OFFICIAL

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20588 of 2013

==========

1. Shyam Nandan Dubey Son Of Late Yasoda Nand Dubey Resident Of Sri Mangal Bhawan, Mohalla - Purani Bazar, P.S. Muzaffarpur Town, District Muzaffarpur, The Retired Artist, Maharani Rameshwari Bhartiya Chikitsa Vigyan Sansthan, Mohanpur, Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, Health Department, Government Of Bihar, Patna
3. The Finance Secretary, Finance Department, Government Of Bihar, Patna
4. The Director - In - Chief, Health Services, Government Of Bihar, Patna
5. The Joint Secretary - Cum - Director (Indigenous Medicine), Health Department, Government Of Bihar, Patna
6. The Additional Secretary, Health Department, Government Of Bihar, Patna
7. The Principal, Maharani Rameshwari Bhartiya Chikitsa Vigyan Sansthan, Mohanpur, Darbhanga
8. The Accountant General, Bihar, Patna
9. The Senior Accounts Officer, Office Of The Accountant General, Bihar, Patna

.... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr. Vijay Kumar Singh
For the Respondent/s : Mr. Dev Kr. Pandey, AC to GP-6

==========

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

11 19-07-2016 Heard learned counsel for the parties.

The petitioner claims that he was duly appointed as an Artist in the year 1979 in Maharani Rameshwari Bhartiya Chikitsa Vigyan Institute, Mohanpur, Darbangha (hereinafter referred to as the Vigyan Institute), a constituente unit of Kameshwar Singh Darbhanga University, Darbhanga. He had submitted his joining on 13.10.1979. The post according to him was sanctioned.

The Institute came to be taken over by the State Government through a notification issued vide Memo No. 30 dated 12.01.1985, with effect from 10.01.1985.

It is the petitioner's case that his services came to be absorbed in the Health Department after the said Institute was taken over by the State Government.

The petitioner retired after attaining the age of superannuation with effect from 30.12.2004 as an Artist working in the said Institute.

The petitioner has been paid his post retiral dues in accordance with the Bihar Pension Rules, 1950 treating the period of his service from 10.01.1985 to 30.12.2004.

The only grievance that the petitioner has is that his pensionable service should have been counted from the date he had submitted his joining in the said Institute on 13.10.1979. It is his case that though the petitioner's appointment was under Kameshwar Singh Darbhanga University, the said period from 13.10.1979 to 09.01.1985 ought to have been included for computing his pensionable service under the State Government.

He has placed reliance on a Supreme Court's decision in case of ***State of Bihar and others vs. Kamal Bansh Narayan Singh, dated 02.08.2007 passed in Civil Appeal No. 1684 of 2005*** and has submitted that the said

period needs to be counted for the purpose of pensionary benefits. The said Supreme Court's decision has been brought on record by way of Annexure-17 to the writ application.

I have carefully gone through the said decision of the Supreme Court. The said decision in my considered view has no application in the facts and circumstances of the present case. In the aforesaid case before the Supreme Court, the appellant was a permanent Government servant under the State of Bihar and he was sent by the State Government to Corporation. In that circumstance, the Supreme Court held that the service rendered by the appellant of that case in the Corporation would be counted for the purpose of computation of pensionary benefits.

Per contra, learned counsel appearing on behalf of the State has drawn my attention to a Division Bench decision of this Court in case of ***Girija Devi Vs. State of Bihar and ors***. dated 27.07.2010 passed in ***LPA No. 146 of 2010*** and has contended that the present dispute is squarely covered by the said Division Bench decision. He has submitted that the Division Bench of this Court in case of ***Girija Devi*** (supra), had occasion to consider Supreme Court's decision in case of ***State of Bihar Vs. S.A. Hassan and another*** reported in ***2002 (2) PLJR 295 (SC).*** The

Supreme Court in case of ***State of Bihar Vs. S.A. Hassan and another*** (supra), has held that the employees of the College were not entitled to claim the benefit of period of their service under the employment of the College before it was taken over when it was under a different management. The Supreme Court in the said case also held specifically that the said decision shall apply to the case of the employees, who retired on superannuation after the date of the said judgment.

The petitioner apparently, retired on 30.12.2004, much after the date of Supreme Court's decision dated 05.03.2002 in case of ***State of Bihar Vs. S.A. Hassan*** (supra).

Learned counsel for the State is absolutely right in his submission while placing reliance on a Supreme Court's decision in case of ***State of Bihar Vs. S. A. Hassan*** (supra), wherein it has been held that the period of service of an employee under the employment of College, before it was taken over when it was a different management, could not be counted for the purpose of computing pensionary benefits.

I do not find any merit in this application. This application, is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			