

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8871 of 2014

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Md. Allauddin @ Allauddin son of Late Sanichar Mian Resident of village -
Kutubpur, Post Office - Mathurapur, District - Khagaria

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal, Department of Food & Consumer Protection, Bihar, Patna
3. The Joint Secretary, Department of Food & Consumer Protection, Bihar, Patna
4. The District Magistrate, Khagaria
5. The President, District Consumer Protection Forum, Khagaria
6. The Chairman - cum - Managing Director, Civil Supplies Corporation, Sone
Bhawan, Veer Chand Patel Path, Patna
7. The District Manager, Bihar State Food & Civil Supplies Corporation, Saharsa
8. The District Manager, Bihar State Food & Civil Supplies Corporation, Khagaria
9. The District Provident Officer, Khagaria
10. The District Treasury Forum, Khagaria
11. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv.
For the State : Mr. Anwar Karim, A.C. to GP-10
For the B.S.F.C. : Mr. Shailendra Kumar Singh, Adv.
For the Accountant General : Mr. Raj Nandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 03-05-2017

The question involved in the present writ application is
whether services rendered by the petitioner in the Bihar State Food
and Civil Supplies Corporation (for short 'Corporation') is qualifying
service for the purpose of pension and can be added to the services



rendered by him in the respondent no.1, i.e. the State of Bihar.

2. The brief facts of the case are that the petitioner was appointed as a peon on 17.12.1973 in the office of the Corporation at Saharsa. He discharged his duties at Saharsa till 12.01.1994 whereafter he was transferred to the office of the District Manager of the Corporation at Khagaria where he worked till 02.11.1997. Since 03.11.1997, he was deputed and absorbed as sweeper-cum-watchman in the office of the District Consumer Forum, Khagaria where he worked till the date of his retirement on 31.12.2007. After retirement the petitioner applied for payment of his retiral dues and pension etc. whereafter the respondents granted him pension and other retiral dues counting his length of service for the period he worked in the office of the District Consumer Forum, Khagaria, i.e. 03.11.1997 to 31.12.2007.

3. Being aggrieved by the decision of the respondent authorities whereby the pension and other retiral dues of the petitioner was paid counting his length of service only for the period he worked in the office of the District Consumer Forum, Khagaria from 03.11.1997 to 31.12.2007 ignoring length of service under the Corporation, the petitioner approached this Court by filing a writ application vide CWJC No.3404 of 2012, which was disposed of vide order dated 22.06.2012 on the following terms:



“ In the aforesaid circumstances, the writ petition is disposed of with direction to the petitioner to file representation before the Secretary, Department of Food and Consumer Protection as also Chairman-cum-Managing Director Bihar State Food and Civil Supplies Corporation, Khagaria within a month from today who will dispose of the representation of the petitioner respectively within a period of four months from the date of receipt of the same in accordance with law and whatever amount is found payable to the petitioner shall also be paid within a period of further two months thereafter.”

4. In view of the aforesaid order dated 22.06.2012 passed by this Court, the petitioner filed his representation before the Principal Secretary, Bihar State Food and Consumer Protection Department, Bihar on 13.07.2012. By a reasoned and speaking order passed on 17.08.2012, the Principal Secretary rejected the representation of the petitioner.

5. Assailing the aforesaid order dated 17.08.2012, learned counsel for the petitioner submitted that the Principal Secretary, Bihar State Food and Consumer Protection Department, Bihar failed to appreciate the fact that the case of the petitioner was not of a fresh appointment rather it was a case of absorption of his service by the State from the employer of its own undertaking. He contended that in view of the fact that the petitioner has continuously served the State either in its undertaking or the department, the respondents ought to have calculated the entire period of service rendered by him either in



the Corporation or the State as qualifying service for pension.

6. *Per contra*, learned counsel for the State submitted that being a surplus employee in the Corporation the petitioner and others of Class III and IV grade employees were appointed on the basis of absorption in the service of the government under a policy decision as a welfare measure. He contended that the petitioner had joined the post of sweeper-cum-night guard in the office of the District Consumer Forum, Khagaria on 03.11.1997 and retired on 31.12.2007. Thus, his pensionable service as per Rule 58 of the Bihar Pension Rules, 1950 (for short 'Pension Rules') has rightly been calculated from 03.11.1997 to 31.12.2007, which is ten years one month and twenty eight days only. He contended that the service of a Government servant would not qualify for pension unless it conforms to the three conditions as enumerated in Section 58 of the Pension Rules. He contended that prior to absorption in State Government service, the petitioner was an employee of the Corporation which is not a Corporation established by or under the Central, Provincial or State Act, but a Corporation registered under the provision of Indian Companies Act, 1956 and to which the Pension Rules is not applicable.

7. Mr. Shailendra Kumar Singh, learned Advocate appearing on behalf of the Corporation contended that pursuant to the



order passed in CWJC No.3404 of 2012, the petitioner never filed any representation before the Chairman-cum-Managing Director of the Corporation and hence, he cannot seek any claim in respect of his services rendered in the Corporation.

8. In reply, learned counsel for the petitioner submitted that since the petitioner is a Class IV employee, he could not properly understand the purport of the order passed by this Court in CWJC No.3404 of 2012 due to which representation could not be filed before the Chairman-cum-Managing Director of the Corporation, but that cannot be a ground for refusing the rightful claim of the petitioner.

9. I have heard learned counsel for the parties and carefully perused the record.

10. The indisputable facts of the case are that the petitioner was appointed as peon on 17.12.1973 in the Corporation at Saharsa. He continued to be an employee of the Corporation till 02.11.1997. Since 03.11.1997 he was deputed and absorbed against a Class-IV post in the office of the District Consumer Forum, Khagaria from where he retired on attaining the age of superannuation on 31.12.2007. He has duly been paid the admissible retiral benefits on the basis of calculation of his service rendered from 03.11.1997 to 31.12.2007.



11. The grievance of the petitioner is that for no plausible reason his services in the Corporation have not been included in the qualifying service for pension.

12. From perusal of the impugned order dated 17.08.2012 passed by the Principal Secretary, Bihar State Food and Consumer Protection Department, Bihar it would be evident that the claim of the petitioner to add the services rendered by him in the Corporation as qualifying service for pension has been negated on the following grounds:-

(i) It is categorically stated in the letter of appointment contained in memo no.1488 dated 31.03.1997 that after appointment on the basis of absorption the provision of the Bihar Service Code and allied service rule of the Government will be applicable to such employees and the date of joining will be the date of appointment of the employees in the Government service.

(ii) Since prior to his appointment on the basis of absorption the petitioner was an employee of the Corporation which is not a Corporation established by or under a Central, Provincial or State Act, but a Corporation registered under the provision of Indian Companies Act, 1956 and to which the Pension Rules is not applicable.

(iii) There is no provision in the Pension Rules to count the previous service nor is there any indication that the past services in the Corporation would be recognized for the limited purpose of pension.

(iv) Under the specific Rule 58 of the Pension Rules, the past services rendered by the petitioner in the Corporation cannot be counted for the



benefit of pension.

13. The petitioner has not filed any rejoinder to the counter affidavit filed on behalf of the State wherein a clear stand has been taken that prior to 03.11.1997 the petitioner was not an employee of the State of Bihar as he was working in the Corporation which is not a Corporation established by or under a Central, Provincial or State Act.

14. In that view of the matter, I am of the opinion that no fault can be found with the order passed by the Principal Secretary whereby he has held that in view of Rule 58 of the Pension Rules past services rendered by the petitioner in the Corporation cannot be counted for the benefit of pension.

15. In this regard, it would be relevant that Rule 56 of the Pension Rules provides that unless it be otherwise provided by special rule or contract, the service of every Government servant qualifies from the date on which he takes the charge of the post to which he is first appointed. There is nothing on the record on the basis of which it can be said that the past services rendered by the petitioner in the Corporation can be counted towards qualifying service for the purpose of pension. Rule 58 of the Pension Rules provides that the service of a Government servant does not qualify for



pension unless it conforms to the following three conditions:-

- (i) The service must be under Government.
- (ii) The employment must be substantive and permanent.
- (iii) The service must be paid by Government.

16. Admittedly, prior to 03.11.1997 the petitioner was not in the service of the Government and he was being paid his salary by the Corporation. Thus, the petitioner cannot make any legitimate claim from the Government for counting of his service rendered in the Corporation for the purpose of pension from the State Government. I further find that since the petitioner did not raise any grievance regarding terms of his appointment under the State Government which clearly stipulated that the date of joining will be the date of appointment in the Government service, he cannot raise any grievance in this regard at this belated stage. If the petitioner was aggrieved by the terms of appointment, he ought to have raised objection in this regard at the initial stage when he was absorbed in the service of the State Government. Thus, the presumption would be that the petitioner voluntarily accepted the terms of appointment. Hence, it is not open for him now after retirement to contend that his past services rendered in the Corporation be added to



the service rendered by him in the service of the State Government.

17. For the reasons stated above, I see no merit in the present application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Pradeep/Md.S

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.05.2017
Transmission Date	

