

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1726 of 2014**

**In**  
**Civil Writ Jurisdiction Case No.9036 of 2013**

- 
- 
1. The State of Bihar
  2. The Principal Secretary, Department of General Administration,  
Government of Bihar, Patna

... .. Appellants

Versus

1. Durga Prasad son of Late Etwari Ram, resident of Mohalla- Tari Godam,  
Bibiganj, P.O.- Danapur Cantt., P.S.- Danapur, District- Patna

.... .. Petitioner-Respondent 1<sup>st</sup> set

2. The Member, Board of Revenue, Bihar, Patna
3. The Accountant General, Bihar, Patna
4. The Director, Directorate of Provident Fund, Pant Bhawan, Patna
5. The State of Jharkhand through the Principal Secretary, Department of Rural  
Development, Ranchi

... .. Respondents-Respondent 2<sup>nd</sup> set

---

---

**Appearance :**

|                         |   |                                                                                                             |
|-------------------------|---|-------------------------------------------------------------------------------------------------------------|
| For the Appellants      | : | Mr. Binay Kumar Pandey, AC to G.A.-2                                                                        |
| For the Pvt. Respondent | : | Mr. Ashok Kumar Choudhary, Advocate<br>Mr. Sanjay Kumar Ghosarvey, Advocate<br>Mr. Akshansh Ankit, Advocate |
| For the A.G., Bihar     | : | Mr. L.P.K. Rajgrihar, Advocate                                                                              |

---

---

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date : 05-03-2018**

Heard counsel for the parties.

State is the appellant in this *intra*-Court appeal assailing the decision dated 09.04.2014 passed by a learned single Judge in C.W.J.C. No. 9036 of 2013. The decision and direction of the learned single Judge upon the respondent State authorities is to give private respondent benefit of past service for the purposes of computation of pension, for the period of work he had rendered in



Bihar State Agro Industries Development Corporation Limited (hereinafter referred to as 'the Corporation') between 04.06.1975 to 13.09.1998.

The relevant facts are that the private respondent, namely, Durga Prasad, was initially appointed on the post of an Assistant in the Corporation. The appointment was made on 04.06.1975. Private respondent rendered service in the Corporation, but obviously he was not very happy with the working condition and atmosphere prevalent in the said Corporation. The Court can take judicial notice of the fact that most of these Corporations which were set up at one point of time or the other with much fanfare ran into difficult times and even payment of salary on a regular basis to the employees became an issue.

An advertisement was issued by the Bihar Subordinate Selection Commission, which was Advertisement No. 11 of 1985. The advertisement was for filling up posts of Assistants in the Secretariat service. Private respondent allured by the opening given by the advertisement made an application, sat for the examination and was declared successful. He came to be appointed on the post of Assistant in the Secretariat on 14.09.1998. From reading of Annexure-1 dated 09.12.1995 as well as Annexure-3 dated 13.05.1998, which are part of the writ application, it is not a



matter of argument that the appointment of the private respondent on the post of Assistant in the Secretariat was a fresh appointment based on the advertisement No. 11/1985. The appointment of the private respondent by the State authorities had no correlation with the past service as an employee of the Corporation.

From the narration of facts, it is absolutely clear that the appointment of the private respondent under the State authorities was on the basis of an application made by him in response to the advertisement and he having successfully cleared the selection process was offered appointment. The joining by the private respondent in the Secretariat service was a new beginning in a new service with a set of different service rules applicable to him.

The private respondent superannuated from the State Government service on 30<sup>th</sup> June, 2012. After almost 10 months of his superannuation, he decided to take a chance by filing a writ application, namely, C.W.J.C. No. 9036 of 2013 wherein besides other prayers or reliefs, a relief was also prayed that the private respondent should be given benefit of full pension. During the course of argument, counsel for the private respondent makes a submission that there was no specific prayer as such to include the period of service rendered by him under the Corporation to entitle him to the benefit of full pension. However, the learned single



Judge included the period of work rendered by the private respondent in the Corporation and directed payment of pension besides other reliefs by including the past service as well.

Counsel representing the State submits that the learned single Judge has committed error both of fact as well as law. The Corporation was an independent company duly registered under the Companies Act. The Corporation did not provide for pension to its employees. Other benefits were, however, available to such employees. It is not disputed even at the bar that the private respondent or any of the employees who had worked in the Corporation were entitled to pension. However, while considering the case, the learned single Judge somehow jumped to a conclusion that the period of service rendered under the Corporation was also pensionable.

The other aspect pointed out is that appointment of the private respondent on the post of Assistant in the Secretariat service was a new appointment and that appointment was on the basis of an advertisement and not as part of any exercise done by the State Government to give an opening to any of the employees of the Corporation. Neither did the Corporation in any manner lend the service of the private respondent to the State Government. In other words, the moment the private respondent accepted the



letter of appointment issued by the State Government, he would have been deemed to have foregone his service with the Corporation and would be treated as a resignation from previous service.

It is also submitted on behalf of the appellant that the learned single Judge has committed a serious error by relying on a decision of the learned single Judge rendered in the case of ***Ramashray Singh vs. The State of Bihar and Others***, reported in **2009 (3) PLJR 471**. It is pointed out that factually the case of ***Ramashray Singh*** (supra) has no application to the present set of facts which are subject matter of adjudication. It was not the case in ***Ramashray Singh*** (supra) that a Corporation employee had opted for new job on the basis of an advertisement and selection, but still the learned single Judge found similarity and applied the facts of the case to the present case and thereby clubbing the service rendered by the private respondent under the Corporation with the service rendered in State Government to give him the maximum benefit of pension because the total length of service rendered by the private respondent under the State Government was only 14 years and the object of giving such a direction was to extend the length of service by clubbing diverse nature of services having no correlation between the two services, which puts burden



upon the State to grant added or extended pension to an employee who was governed by the service conditions of the State and not of the Corporation.

It is also of significance that the private respondent had filed an application before the General Administration Department and the same was considered by the authorities and a speaking order had been passed indicating therein that the nature of two services being totally different, the work rendered by the private respondent in the Corporation, not being a pensionable one and that the transition of the private respondent from the Corporation to the State Government, has no linkage whatsoever.

In the given facts, therefore, we come to a considered opinion that the earlier period of work rendered by the private respondent under the Corporation cannot be clubbed with the service rendered by him on the basis of selection and appointment made by the State Government, for the purposes of granting him benefit of extended period of pension. Such a direction was totally uncalled for. The significant point, which is required to be taken note of, is that it was out of own volition of the private respondent that he opted for the new service on the basis of the advertisement issued and his selection and appointment was a new beginning with a new employer and with a new service condition.



In the above given circumstances, therefore, the direction of the learned single Judge to treat the period of service between 04.06.1975 to 14.09.1998, the date the private respondent joined the Secretariat service was uncalled for. The appeal is allowed. The order of the learned single Judge in respect of the direction for clubbing the period of service noticed above is set aside. It is, however, made clear that the private respondent will be entitled to his pension for the period of service he has rendered under the State Government from 14.09.1998 till his date of superannuation i.e. 30.06.2012.

Appeal is allowed in terms of the above.

**(Ajay Kumar Tripathi, J)**

**( Nilu Agrawal, J)**

Pawan/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | A.F.R.     |
| CAV DATE          | N/A        |
| Uploading Date    | 07.03.2018 |
| Transmission Date | N/A        |

