IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11654 of 2018

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Ishwar Chandra Sharma Son of Krishna Sharma, Permanent resident of Village- Ahaladpur, P.O.- Haridaspur, P.S.- Kanti, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Principal Secretary, Department of Health, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The District Magistrate, Muzaffarpur.
6. The Civil Surgeon-cum-Chief Medical Officer, Muzaffarpur.
7. The Additional Chief Medical Officer-cum-Drawing and Disbursement Officer, Muzaffarpur.
8. The District Leprosy Officer, Muzaffarpur.
9. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anju Mishra

For the Respondent/s : Mr.Md. N.H. Khan- Sc1

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 19-07-2022

The present writ petition has been filed for directing the Respondent authorities to pay all the retiral benefits as also the consequential benefits to the writ petitioner counting his pensionable service right from his first appointment in the Bihar State Construction Corporation Limited on 15.05.1977 till his retirement on 30.09.2015, after being absorbed as non-medical assistant at Primary Health Centre, Kuthani, under the Muzaffarpur Surgency, under the Health Department, Government of Bihar, Patna.

2. The brief facts of the case are that the petitioner, pursuant to an advertisement issued in the year 1976 had applied for appointment on the post of typist in the Bihar State Construction Corporation Ltd. and after going through the selection process, he was appointment vide letter dated 28.03.1977, whereafter he submitted his joining on 15.05.1977 in the office of Construction Superintendent (Field), Patna as Typist. Subsequently, the Department of Personnel and Administrative Reforms, Govt. of Bihar, took a policy decision vide resolution dated 5.5.1979 regarding absorption of surplus employees working in various Boards/ Corporations in the State of Bihar in the regular establishment of the Government of Bihar. The case of the petitioner for absorption in the regular establishment was processed in the year 1990 but since the petitioner was not absorbed, he was compelled to file a writ petition bearing CWJC No. 4438 of 1995 and a co-ordinate Bench of this Court vide order dated 15.09.1995 granted liberty to the petitioner to file a representation before the Health Commissioner, whereafter the petitioner had filed appropriate representation but the same was rejected vide letter dated 4.9.1996, which was challenged by the petitioner by way of filing yet another writ petition bearing CWJC No. 11141 of 1996 and a co-ordinate Bench of this Court by an order dated 23.11.2010 allowed the said writ petition and quashed the said order dated 4.9.1996 as also directed the Principal Secretary, Personnel and Administrative Reforms Department to consider the case of the petitioner and give suitable directions for absorption of the petitioner. It was only then that the Administrative Reforms Department, vide letter dated 26.07.2011 held that the claim of the petitioner for absorption was bonafide and thereafter, the Principal Secretary, Department of Health, vide letter dated 7.3.2013 had issued direction for absorption of the petitioner on the post of non-medical Assistant and the petitioner was posted under the Muzaffarpur Surgency. The petitioner was thereafter relieved from Bihar State Construction Corporation Ltd. Patna on 20.3.2013, whereafter he had joined at Muzaffarpur Surgency on 23.3.2013. The petitioner then came to be retired on 30.09.2015, however, he has been denied pension on account of not completing the requisite number of years required for grant of pension.

3. The learned counsel for the petitioner has submitted that the petitioner has been in continuous service without any break since his first joining in the Bihar State Construction Corporation Ltd. on 15.05.1977 till his superannuation on 30.09.2015.

4. The learned counsel for the petitioner has referred to a judgment dated 12.12.2017 rendered by the learned Division Bench of this Court, passed in L.P.A. No. 716 of 2017 (**Mukteshwar Prasad Singh & Ors. vs. The State of Bihar & Ors**.) and other analogous cases to contend that in similar cases other incumbents/ retired employees have been directed to be granted pensionary benefits by counting the service period, as rendered by them in the Boards/Corporations/ Public Sector Undertakings, prior to their absorption. In this regard it would be apt to reproduce paragraphs No. 5 to 9 of the said judgment rendered in the case of Mukteshwar Prasad Singh (supra) herein below:-

> *"5. From the aforesaid legal principles laid down by the Hon'ble Supreme Court, it is clear that the employees identically situated like the appellants herein, who were working in various Public Sector undertakings, Boards and*

Corporations in the undivided State of Bihar and whose cases were decided by the High Court of Jharkhand, have been granted benefit and the Hon'ble Supreme Court held that they are entitled to count their service prior to theirabsorption for the purpose of retiral benefits and grant all pensionary benefits.

6. That being the position, we see no reason to deny the same benefit to these appellants, who are identically situated, like the other, who are allocated to State of Jharkhand after re-organization of the State of Bihar in the year 2000.

7. In view of the aforesaid, we allow all these appeals,quash the order dated 29.03.2017 passed by the Writ Court in C.W.J.C. No. 7702 of 2010 and other analogous cases and direct the State of Bihar to grant benefit to each of the appellants herein by counting services as rendered by them in the Boards, Corporations and Public Sector Undertakings prior to their absorption and to grant them the pensionary benefit after counting such service in the Boards or Corporations.

8. That apart, we may observe that this order shall bemade applicable to all such employees, who are working in the State of Bihar. Regardless to the fact as to whether they have filed writ application or not, as per the Litigation Policy of the State of Bihar, this order shall be implemented, in the case of all identically situated employees, who claim the benefit by the State

> *Government.*
>
> *9. The benefits accrued to the appellants by virtue of this order be granted within a period of three months from today."*

5. Thus, it is submitted that the period of service rendered by the petitioner in the Bihar State Construction Corporation Ltd. is required to be counted for the purposes of calculation of retiral benefits and, accordingly, the payments are required to be made forthwith.

6. Per contra, the learned counsel for the State has though not denied the aforesaid facts and circumstances of the present case but has submitted that the job of the Respondents in the Bihar State Construction Corporation Ltd. was not pensionable. Nonetheless, it has not been disputed that the aforesaid judgment dated 12.12.2017 passed in L.P.A. No. 716 of 2017 and other analogous cases has stood affirmed by the Hon'ble Apex Court with the dismissal of the S.L.P. bearing S.L.P. (C) No. 15567 of 2018 on 4.3.2020. The learned counsel for the Respondent State has also referred to the supplementary counter affidavit filed in the present case to submit that the matter of the petitioner was referred to the Finance

Department, Government of Bihar, which has opined that the aforesaid L.P.A. No. 716 of 2017 pertains to absorption of persons deputed in the Treasury and G.P.F. Offices of the Government of Bihar, thus the case of the petitioner is distinguishable from the said case. In such view of the matter it has been contended by the learned counsel for the Respondent State that the petitioner is not entitled for any relief, as prayed for.

7. At this juncture, the learned counsel for the petitioner has referred to the supplementary affidavit filed on behalf of the petitioner in the present case and has submitted that the aforesaid judgment dated 12.12.2017 was passed by the learned co-ordinate Bench of this Court in the case of Mukteshwar Pd. Singh (supra) in the light of dismissal of Civil Appeal No. 13372 of 2015 and other analogous cases by the Hon’ble Apex Court vide judgment dated 07.09.2017, which was preferred by the State of Jharkhand and the issue raised by it before the Hon’ble Apex Court was that the concerned employees of the Boards/ Corporations, who had been absorbed in the Finance Department of the State of Jharkhand, did not have a pensionable service, hence the tenure of such employees, rendered in the Boards/ Corporation will not be liable to be taken into account for the purposes of calculation of pensionary benefit of such employees, upon superannuation from the regular establishment of the State Government. It is also submitted that the State of Jharkhand had also preferred a review petition but the same has also stood dismissed. At this juncture, it would be apt to first reproduce the relevant portion of the judgment dated 14.01.2015 passed by the learned Division Bench of the Hon’ble Jharkhand at Ranchi in L.P.A. No. 340 of 2013 (State of Jharkhand Vs. Dadan Prasad Singh & Ors.) and other analogous cases herein below:-

> *“6. Learned counsel in all the Letters Patent Appeals submitted that the private respondents, who are the original petitioners, had preferred the writ petitions, mainly for the reasons that initially the employees of Boards/Corporations in the erstwhile State of Bihar were working on deputation in the State of Jharkhand in the Directorate of Provident Fund and in case of the respondents in L.P.A. No. 357 of 2013, they were working on deputation in the Treasury Offices. Thereafter, all of them were absorbed in the Government services. No option was ever given to these respondents-employees that if they will go on deputation either in the services of Directorate of Provident Fund or in the services of Treasury Offices from the Boards/Corporations, they will lose their earlier services, rendered in the Boards/Corporations, and will be absorbed as fresh employees in the Government.*

Looking to the order at Annexure 2 in L.P.A. No. 340 of 2013, which is an order of deputation, it appears that no such option was given to the respondents-employees that if they so want, they may opt for going on deputation to the Directorate of Provident Fund or to the Treasury Offices, from their parental Boards/Corporations. Such option was never offered to the respondent-employees. Moreover, from Annexure 2 in L.P.A. No. 340 of 2013 it appears that the employees were on deputation since the year, 1997 and further, looking to the order of absorption, which is at Annexure 16 to the memo of L.P.A. No. 340 of 2013, it appears that the same was issued in the year, 2011. Thus, There was a long gap between the date of deputation, which is dated 2 nd September, 1997 (in case of L.P.A. No. 340 of 2013) and the date of absorption dated 19th September, 2011, which is at Annexure 16 to the memo of L.P.A. No. 340 of 2013. Thus, the respondent-employees were sent on deputation in Directorate of Provident Fund or in the Treasury Offices, without any option given to them and they worked on deputation for more than one decade and, thereafter, they were absorbed in the government job. Looking to Annexure 6 to the memo of L.P.A. No. 340 of 2013, it further appears that meanwhile the parental departments of the respondents-employees demanded such employees. Parental department also pointed out that if these employees will not return, they may be suspended, but, the Directorate of Provident Fund refused to send them back or refused to return the services of those employees. However, after absorption, the Government is now taking stand that the earlier services, rendered by them with the Boards/Corporations shall not be counted for the purposes of pension and other retiral benefits and these employees shall be treated as afresh employees from *the date of their absorption. Thus, the respondents-employees, who have remained in job for several years in the Boards/Corporations and were sent on deputation at the Directorate of Provident Fund/Treasury Offices, for no fault of their own, are losing their earlier job and consequently, there will be a great financial loss in pension, gratuity etc. and, therefore, they had preferred the writ petitions before the learned Single Judge, which have been allowed by the learned Single Judge and hence, the respondent-State of Jharkhand has preferred these Letters Patent Appeals.*

Arguments canvassed by the learned counsel for the Appellant-State:

7. Learned counsel for the appellant-State of Jharkhand has vehemently submitted that the respondents-employees, who were earlier in the services of or in the employment of Boards/ Corporations, with their separate legal entity, have worked for few years on deputation in the Government. They were absorbed in the year, 2011 and from the date of their absorption, they have now become the employees of the Government and hence, their pension, provident fund, gratuity etc. shall be calculated on the basis of the services, rendered by them after their absorption viz. on and from 2011 onwards and their prior services, rendered with the Boards/Corporations, shall not be calculated at all.

8. Learned counsel for the appellant-State has also relied upon the following decisions, in support of his contention,

(a) 2006(1) PLJR 269 [Secretary, Finance (National Savings) Department v.

Vinod Kumar];

(b) (1998)5 SCC 454-Pr. 9 (Major M.R. Penghal v. Union of India);

(c) (2000)4 SCC 186 (Council of

Scientific & Industrial Research v. Dr. Ajay Kumar Jain);

(d) (2002)3 SCC 566-Pr. 6, 8, 10, 12 & 13 (State of Bihar v. S.A. Hassan);

(e) (2003)5 SCC 163-Pr. 17 (A.K. Bindal v. Union of I;ndia);

(f) (2003)10 SCC 499 (State Bank of India v. L Kannaiah);

(g) (2006)4 SCC 132-Pr. 55, 63 & 67 (Avas Vikas Sansthan v. Avas Vikash Sansthan Engineers Assn.);

(h) (2006)8 SCC 129-Pr. 19, 25, 26, 39 & 55 (Indu Shekhar Singh v. State of U.P.) &

(i) L.P.A. No. 1141 of 201, decided on 15th September, 2010 (The State of Bihar & anr. v. Narain Dutta Pandey & anr.)

and on the basis of the aforesaid decisions, it has been submitted by the learned counsel that the previous services of those employees, who were earlier serving in the Boards or Corporation and later on absorbed in the government services, cannot be taken into consideration for the purposes of pension, gratuity and such other retiral benefits and they shall be treated as government employees on and from the date on which they were absorbed in the government services."

14. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain these Letters Patent Appeals, mainly for the following facts and reasons:

(i) L.P.A. No. 340 of 2013 has been taken as a leading case for ready reference of the dates as well as Annexures.

(ii) It appears that the private respondents in these Letters Patent Appeals are the original petitioners, who had preferred the writ petitions mainly for the reasons that they were initially in the services of the governmental Boards/Corporations in the erstwhile State of Bihar. They were never dissatisfied by their parental departments nor there was any agitation in their mind to go on deputation in the services of either Directorate of Provident Fund or Treasury Offices. These peaceful employees were put in difficulty because of the government letters from the Directorate of Provident Fund as well as from the Treasury Offices.

(v) The reward has been given of the aforesaid qualities of the services of these employees after absorption in the year, 201 (Annexure 16 to the memo of L.P.A. No. 340 of 2013) that their previous services rendered with their parental Boards/Corporations shall not be calculated for the purposes of retirement benefits. This is not permissible in the eyes of law and this is a patent illegality committed by the State, mainly for the reasons that never any option was given to these respondents-employees at the time of:

(a) their deputation in the year, 1997;

(b) during the period of deputation when they were working honestly,

> *sincerely, diligently at the Directorate of Provident Fund and Treasury Offices, till they were absorbed; and*
>
> *(c) never any option was given to these employees at the time of their absorption i.e. on 19th September, 2011 (Annexure 6 to the memo of L.P.A. No. 340 of 2013).*

(x) Thus, the appellant-State has given full concession to one Sri Parsuram Chaudhary, who had preferred W.P.(S) No. 3672 of 2009, which was decided vide order dated 14th July, 2011 and his earlier services prior to his absorption has been reckoned for the purposes of calculating the retirement benefits whereas these respondents- employees have not been given the benefits of the said decision, which has been rendered on 14th July, 2011 in W.P.(S) No. 3672 of 2009. This judgment has been implemented also by the State Government.

(xi) Further, one of the respondents has preferred W.P.(S) No. 1693 of 2012, paragraph no. 29 whereof reads as under:

> *"29. That the Government of Jharkhand also absorbed the services of the employees similarly situated to the petitioners who had come on deputation to the National Saving Directorate, Government of Jharkhand, Ranchi and the Department of Cabinet (Election), Government of Jharkhand, Ranchi by office*

order contained in Memo No. 634 dated 23.10.2007 and order contained in Memo No. 227 dated 3.2.2009."

In view of the aforesaid facts also the State of Jharkhand, who is appellant in these Letters Patent Appeals without any order, passed in a writ petition, at its own, has taken into consideration the previous services of similarly situated another employee for the purposes of retirement benefits.

(xiii) Apart from these two orders viz. In W.P.(S) No. 3672 of 2009 dated 14th July, 2011 and the Government's own action, as stated in paragraph no. 29 of W.P.(S) No. 1693 of 2012, independent of these facts also, the appellant-State cannot deny the retirement benefits, by not calculating their previous services rendered in the Boards/Corporations or their previous services prior to their absorption, because the respondents-employee were not at fault at all and no option was ever given to them whether they want to go on deputation or not nor any option was given to them at the time of their absorption whether they want to return to their parental departments or not. On the contrary, looking to Annexure 4, 5 and 6 of the memo of L.P.A. No. 340 of 2013, it appears that even though few employees were suspended by their parental departments, the Directorate of Provident Fund has refused to send them back. This shows non-voluntary phenomenon on the part of the

employees to go and work wherever they were directed. These facts make the present case different from the facts, stated in the aforesaid decisions, which are relied upon by the learned counsel for the appellant-State in all the Letters Patent Appeals.

15. As a cumulative effect of the aforesaid facts and reasons, we hereby uphold the decisions, rendered by the learned Single Judge in the writ petitions, no error having been committed by the learned Single Judge in deciding the writ petitions. Thus, there being no substance, these Letters Patent Appeals are hereby dismissed. "

8. The appeal filed by the State of Jharkhand against the aforesaid judgment dated 14.01.2015, passed in the case of Dadan Pd. Singh & Ors. (supra) i.e. Civil Appeal No. 13372 of 2015 has also stood dismissed by a Judgment dated 07.09.1017 rendered by the Hon'ble Apex Court.

9. The learned counsel for the petitioner has also referred to an order dated 14.08.2018 passed by the Hon'ble Apex Court in a Special Leave Petition filed by the State of Bihar against the aforesaid judgment dated 12.12.2017 passed by the learned Division Bench of this Court in L.P.A. No. 763 of 2917 and other analogous cases, including the case of Mukteshwar Pd. Singh (supra), to show that the Hon'ble Apex Court had formulated the issue involved in the said Special Leave Petition to the effect that in order to decide the issue, it needs to be seen as to whether the job of the concerned employees, who were working in different public sector Undertakings, Corporations, were pensionable or not. In this regard, it would be apt to reproduce the aforesaid order dated 14.08.2018, passed by the Hon'ble Apex Court herein below:-

> *"In order to decide the issue involved, it needs to be seen as to whether the respondent employees, who were working in different Public Sector undertakings, Corporations whether their job in the undertakings were pensionable or not.*
>
> *Learned counsel for the petitioner has filed an affidavit in this behalf, including certain documents therewith, as per which, job of the respondent in the said undertaking was not pensionable.*
>
> *Learned counsel for the respondent who appears on behalf of the caveator wants to file reply affidavit, which may be filed within two weeks. Rejoinder affidavit, if any, be filed within two weeks thereafter.*
>
> *List after four weeks."*

10. It is also pointed out that ultimately the aforesaid Special Leave petition bearing S.L.P. (c) No. 15567 of 2018 has stood dismissed by the Hon'ble

Apex Court by an order dated 4.3.2020, relevant portion whereof is reproduced herein below:-

> *“Delay condoned.*
> *The impugned judgment of the High Court of Judicature at Patna, after stating this Court’s order dated 07.09.2017 in its applicability to the State of Jharkhand post bifurcation then held:*
>
> > *“5. From the aforesaid legal principles laid down by the Hon’ble Supreme Court, it is clear that the employees identically situated like the appellants herein, who were working in various Public Sector Undertakings, Boards and Corporation in the undivided State of Bihar and whose cases were decided by the High Court of Jharkhand have been granted benefit and the Hon’ble Supreme Court held that they are entitled to count their service prior to their absorption for the purpose of retiral benefits and grant all pensionary benefits.*
> >
> > *6. That being the position, we see no reason to deny the same benefit to these appellants, who are identically situated, like the other, who are allocated to State of Jharkhand after re-organization of the State of Bihar in the year 2000.*
> >
> > *7. In view of the aforesaid, we allow all these appeals, quash the order dated 29.03.2017 passed by the writ Court in C.W.J.C. No. 7702 of 2010 and other analogous cases and direct the State of Bihar to grant benefit to each of*

the appellants herein by counting services as rendered by them in the Boards, Corporation and Pblic Sector Undertakings prior to their absorption and to grant them the pensionary benefit after counting such service in the Boards or Corporations."

We have also been informed that from the judgment dated 07.09.2017, a review petition was dismissed by this Court on 06.03.2018 in which substantially the same grounds as are taken by the State today were taken by the State of Jharkhand after which the review petition was rejected.

In the circumstances, we are of the view that the Special Leave Petitions need to be dismissed.

Considering that the respondents have not been paid anything, the State of Bihar to implement the impugned LPA judgment and to see that all benefits mentioned therein are paid within a period of six months from today.

Pending applications stand disposed of."

11. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the present case is squarely covered by a judgment dated 12.12.2017 passed by the learned Division Bench of this Court in L.P.A. No. 716 of 2017 and other analogous cases [Mukteshwar Pd. Singh & Ors. (supra)], which has also been upheld by the Hon'ble Apex Court in as much as the Special

Leave Petition filed by the State of Bihar against the said judgment dated 12.12.2017 has stood dismissed by an order dated 4.3.2020 passed by the Hon'ble Apex Court in S.L.P. (c) No. 15567 of 2018. This Court also finds that though the Hon'ble Apex Court had formulated an issue in the aforesaid Special Leave Petition to the effect that it is required to be seen as to whether the job of the employees in question, who were working in various Boards/ Corporations were pensionable or not, however, ultimately Hon'ble Apex Court dismissed the said Special Leave Petition filed by the State of Bihar and apparently declined to give any credence to such issue of law raised by the State of Bihar. In such view of the matter, it cannot be said that the petitioner has to be treated differently, hence, the case of the petitioner is required to be determined and accordingly benefits are supposed to be granted to him in accordance with the law laid down by the learned Division Bench of this Court in its judgment dated 12.12.2017 passed in the case of Mukteshwar Prasad Singh & Ors. (supra).

12. Accordingly, the present writ petition stands allowed and the Respondent State is directed to calculate and grant pensionary benefits to the petitioner herein by counting the services as rendered by him in the Bihar State Construction Corporation Ltd., prior to his absorption in the regular establishment of the Government of Bihar. It is further directed that the benefits, which have accrued to the petitioner as a result of passing of the present judgment, be granted to the petitioner within a period of three months from today.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
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