IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.614 of 2017
In
Civil Writ Jurisdiction Case No.18478 of 2011

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Tuntun Prasad Singh Son of Late Rijhan Singh Resident of Mohalla - Kadam Kuan, P.S. - Kadam Kuan, Dist.- Patna.

... ... Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna
2. Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat,
3. Principal Secretary, Finance Department, Government of Bihar, Main Secretariat, Patna.
4. The District Education Officer, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. S. K. Agrawal, Advocate Mr. Shanti Pratap, Advocate
For the Respondent/s	:	Ms. Namrata Singh, AC to GA-12 Mr. Apurva Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 19-01-2023

Short question for consideration in the present litigation is whether appellant is entitled to count service rendered in the Census Department on temporary basis during the period from 1984 to 1999 or not?

2. On 10.10.2022, the following order was passed:-

"Heard learned counsels for the parties.

Short question for consideration in

the present litigation is whether appellant is entitled to count service from the year 1984 to 1999 for the purpose of retiral benefits or from the year 1999 till 31st January, 2007, the date on which he has attained age of superannuation and retired from service.

Learned counsel for the appellant intends to furnish relevant notification of the Government which provides that such of those employees who worked in the census programme during the period from the year 1984 to 1999 are entitled to count service towards retiral benefits. He is permitted to produce relevant government notification/Rules/executive order, if any, before the next date of hearing failing which matter would be dealt with that appellant has no statutory right to seek direction to count the past service from the year 1984 to 1999 towards extension of retiral benefits from the year 1984 to 1999, the date on which he has retired from service.

Re-list this matter on 07.11.2022."

3. Thereafter on 28.11.2022, the following order was passed:-

"Appellant could not apprise this Court pursuant to the previous order. Therefore, State counsel is hereby directed

to get an affidavit of one of the officer from the Finance Department to the extent that whether is there any policy decision of the State of Bihar in respect of counting service rendered in the Census Department by an employee or not? To that effect an authorized officer of the Finance Department shall file an affidavit as to whether is there any policy or not, on the next date of hearing.

Re-list this matter on 12.12.2022."

4. The 3rd Respondent has filed counter affidavit, Para-10 and Para-11 reads as under:-

"10. That in this context it is humbly stated that there is no such policy decision of the State Govt. to add the Services rendered in Census Operation for the purpose of pensionary benefits.

11. That it is made clear that unless a Govt. Servant fulfills the three requisite criteria mentioned in Rule 58 of the Bihar Pension Rules, his services shall not be pensionable:-

i. The Service must be under Government;

ii. The Employment must be Substantive and permanent;

iii. The service must be paid by

the Government."

5. The eligibility criteria to have the benefit of pension, a person must be under the Government service, he must be substantive and permanent holder of the post and service must be paid by the Government. The appellant could not satisfy Clause (ii) that he was holding the substantive and permanent post in the Census Department during the intervening period from the year 1984 to 1999. In other words, it was a temporary service. Further, he has been retrenched from the Census Department while holding the temporary post. The appellant could not apprise this Court any provision with the Bihar Pension Rules that the temporary services rendered in the Central Government could be counted for the purpose of calculating number of years of service towards pension.

6. On the other hand, learned counsel for the appellant relied on a Full Bench decision of this Court, which has been annexed as Annexure-4, passed in C.W.J.C. No. 2346 of 1990 decided on 23.04.1992. The Full Bench has not examined any of the provisions of Bihar Pension Rules so as to take assistance of the Full Bench decision. As long as statutory provisions like the Bihar Pension Rules do not provide for counting temporary service rendered by a person in the Central

Government, the Full Bench decision is not assisting the appellant. It is further submitted that Government of India has issued a circular to count the temporary service rendered by such of those persons in the Census Department and necessary directions have been given to the State Government. The aforementioned circular has not been placed on record, that apart, the circular cannot over-right the statutory provisions like Bihar Pension Rules, therefore, the aforesaid contention of the appellant is hereby rejected.

7. In the result, the L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.01.2023
Transmission Date	