

IN THE HIGH COURT OF JUDICATURE AT PATNA

State of Bihar and Others

vs.

Ishwar Chandra Sharma

Letters Patent Appeal No.584 of 2022

23 April 2025

(Hon'ble Mr. Justice P. B. Bajanthri and Hon'ble Mr. Justice S. B. Pd. Singh)

Issue for Consideration

- Whether Respondent is entitled to have the benefit of counting past service rendered in Bihar State Construction Corporation Limited for the purpose of seeking retiral benefits and pension or not?
- Whether service of Respondent particulars is on par with Mukteshwar Prasad Singh or not?

Headnotes

Service Law—Retiral benefits—granted to Respondent by learned Single Judge—Respondent was appointed in the then Bihar State Construction Corporation Limited to the post of Typist and he had joined in service—in meantime, State of Bihar evolved a policy decision relating to absorption of surplus employees working in various Boards and Corporations in the State of Bihar—after several round of litigation, Respondent was absorbed—Appellant not considered the service of Respondent served in Corporation while extension of retiral benefits and pension under Old Pension Scheme—Clause-3 stipulates that for absorption of Respondent read with his service particulars would be in respect of New Pension Scheme—Old Bihar Pension Scheme was not existing in the eye of law when Respondent was relieved rather New Pension Scheme was prevailing at that time.

Held: Mukteshwar Prasad Singh and others, who were working in Board or Corporation, their services have been deputed to State Government department—therefore, Court has taken note of the fact that they were on deputation for a long period more than decades—it was directed for absorption while counting service rendered in the respective Corporation or Board—Respondent was not deputed to any of the department and he continuously worked in the Corporation from the date of his appointment till he was relieved from the Corporation—services of Respondent have not been absorbed with retrospective date *i.e.* one day prior to introduction of New Pension Scheme, the Respondent is not entitled to have the benefit of old pension scheme for the reasons that it ceases as and when New Pension Scheme was

introduced in the year 2005—order of the learned Single Judge set aside—appeal allowed. (Paras 7, 9)

Case Law Cited

Mukteshwar Prasad Singh & Ors. vs. The State of Bihar & Ors., LPA No. 716 of 2017—Distinguished.; CWJC No. 11654/2018—Set Aside.

List of Acts

Old Pension Scheme, New Pension Scheme

List of Keywords

Old Pension Scheme, New Pension Scheme, absorption, deputation, retiral benefits, pension.

Case Arising From

Civil Writ Jurisdiction Case No.11654 of 2018

Appearances for Parties

For the Appellants: Mr. M. N. H. Khan, SC-1.; Mr. Md. Irshad, AC to SC-1.

For the Respondents: Mr. Prabhat Ranjan, Advocate; Mr. Anju Mishra, Advocate.

Headnotes Prepared by: Abhas Chandra, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.584 of 2022
In
Civil Writ Jurisdiction Case No.11654 of 2018

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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.

... .. Appellants

Versus

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

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. M.N.H.Khan, SC-1
		Mr. Md. Irshad, AC to SC-1
For the Respondent/s	:	Mr. Prabhat Ranjan, Advocate
		Mr. Anju Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-04-2025

The state Appellants have assailed the order of the learned Single Judge dated 19.07.2022 passed in C.W.J.C. No. 11654 of 2018. Grievance of the Respondent- Ishwar Chandra Sharma is that he is entitled for retiral benefits while counting



service rendered in the Bihar State Construction Corporation Limited or not?

2. Brief facts of the case are that Respondent - Ishwar Chandra Sharma was appointed in the then Bihar State Construction Corporation Limited on 28.03.1977 to the post of Typist and he had joined in service on 15.05.1977. On 05.05.1979, State of Bihar evolved a policy decision relating to absorption of surplus employees working in various Boards and Corporations in the State of Bihar. It is learnt that Respondent's case was processed for absorption in the year 1990. However, it was not finalized, resultantly, Respondent filed C.W.J.C. No. 4438 of 1995 and it was disposed of asking the petitioner to approach Health Commissioner with representation. The Respondent's representation was rejected on 04.09.1996. Once again Respondent invoked filing C.W.J.C. No. 11141 of 1996. The order dated 04.09.1996 of the Health Commissioner was set aside and further directed to reconsider the grievance of the Respondent for absorption by the Principal Secretary, GAD. The Principal Secretary, GAD proceeded to consider name of the Respondent for absorption. Similar view has been taken by the Principal Secretary, Health Department on 07.03.2013. Thereafter, absorption order has been issued by the Director on



13.03.2013. In this backdrop, Respondent's services have been relieved from the Bihar State Construction Corporation Limited and he had joined service in the Health Department at Muzaffapur Sergeancy on 23.03.2013 and he has attained age of superannuation and retired from service on 30.09.2015. In this backdrop, for non-consideration of Respondent's services rendered in the Corporation towards extension of retiral benefits and pension, the Respondent has invoked remedy of filing C.W.J.C. No. 11654 of 2018, the learned Single Judge has allowed the Respondent's Writ petition. Feeling aggrieved by the learned Single Judge order dated 19.07.2022 passed in C.W.J.C. No. 11654 of 2018, State-Appellant preferred the present L.P.A.

3. Learned counsel for the Appellant-State submitted that the Appellant case is not similarly situated person like earlier litigations in the case of ***Mukteshwar Prasad Singh & Ors. vs. The State of Bihar & Ors.*** (L.P.A. No. 716 of 2017). In Mukteshwar Prasad Singh & Others, who were also working in the Corporation or Board they were on deputation to various State Government Department in the year 1997. In that context, they have been extended benefit of absorption with earlier date. Whereas, in the present case, Respondent- Ishwar Chandra



Sharma, who was working in the Bihar State Construction Corporation Limited was not deputed to any of the Government department. Therefore, the cited decision by the learned Single Judge and taking note of the same and extending the benefit of retiral benefits to the Respondent- Ishwar Chandra Sharma is incorrect. It is further submitted that as on the date of absorption of the Respondent- Ishwar Chandra Sharma, new pension scheme was introduced in the year 2005. Having regard to the fact that as on the date of absorption of Respondent- Ishwar Chandra Sharma in the year 2013, earlier pension scheme was not existing in the eye of law. Therefore, question of extending retiral benefits and pension is not permissible while invoking non-existing statutory provision. Therefore, rightly in the absorption order Authority has conveyed the message to the Respondent to the extent that new pension scheme is applicable to the Respondent. It is also submitted that the service rendered in Bihar State Construction Corporation Limited cannot be counted for the purpose of retiral benefits and pensionary benefits under the old Bihar Pension Rules. In the light of these facts and circumstances, order of the learned Single Judge is liable to be set aside.

4. *Per contra*, learned counsel for the Respondent



resisted the aforementioned contentions and submitted that the Respondent's case for absorption was under process in the year 1990. On two occasions, he had invoked remedy before this Court in C.W.J.C. No. 4438 of 1995 and C.W.J.C. No. 11141 of 1996. Thereafter, absorption order has been passed in the month of March, 2013. Therefore, the Respondent is entitled to count the past service rendered in the Bihar State Construction Corporation Limited for the purpose of extending retiral benefits and pension on par with others.

5. Heard the learned counsel for the respective parties.

6. Core issue involved in the present *lis* is whether Respondent- Ishwar Chandra Sharma is entitled to have the benefit of counting past service rendered in Bihar State Construction Corporation Limited for the purpose of seeking retiral benefits and pension or not? Whether, Respondent- Ishwar Chandra Sharma service particulars is on par with Mukteshwar Prasad Singh or not? Dates and events are not disputed insofar as appointment and joining of the Respondent in Bihar State Construction Corporation Limited in the year 1977. It is also not disputed Government of Bihar evolved a policy decision regarding absorption of surplus employees



working in various Boards and Corporation in the State of Bihar. The Respondent's case for absorption was processed in the year 1990. Further, he had approached this Court on an earlier two occasions for the purpose of absorption in the year 1995 and 1996. Thereafter, for the first time, his services have been absorbed in the month of March, 2013. It is necessary to reproduce absorption order dated 13.03.2013, it is at page-62 of Writ petition and it reads as under:-

**“निदेशालय, स्वास्थ्य सेवाएं,
बिहार पटना
आदेश**

आ0सं0-4/विविध-6-88/2011-611(4)/पटना, दिनांक-13.3.13

समादेश याचिका सं0 4438/95 एवं 1141/96 में क्रमशः 15.09.95 एवं 23.11.10 में पारित न्यायादेश तथाह उसके अनुपालन में सामान्य प्रशासन विभाग के संदर्भित आदेश के अनुपालन में प्रधान सचिव, स्वास्थ्य विभाग, बिहार, पटना के ज्ञापांक 578(4) दिनांक 07.03.13 के द्वारा तिरेक घोषित कर्मचारी श्री ईश्वर चन्द्र शर्मा (जन्म तिथि 26.09.1955) टंकक, बिहार स्टेट कन्स्ट्रक्शन कॉरपोरेशन लिमिटेड, पटना को नन मेडिकल असिस्टेन्ट (वर्ग तीन) के पद पर समायोजित करने का निर्णय लिया गया है।

उक्त आदेश के आलोक में बिहार स्टेट कन्स्ट्रक्शन कॉरपोरेशन लिमिटेड, पटना द्वारा घोषित अतिरेक कर्मचारी श्री ईश्वर चन्द्र शर्मा, पिता- श्री कृष्ण शर्मा, ग्राम-अहलादपुर, पो0-हरिदासपुर, थाना-काँटी, जिला-मुजफ्फरपुर को सिविल सर्जन, मुजफ्फरपुर के अधीन प्रा0स्वा0केन्द्र, कुठनी में नन मेडिकल असिस्टेन्ट के रिक्त पद पर वेतनमान 5200-20200 ग्रेड पे 2800 के प्रक्रम में एवं सरकार द्वारा समय-समय पर स्वीकृत भत्तों के साथ निम्नांकित शर्तों पर अस्थायी रूप से समायोजित किया जाता है। उनके वेतनादि का भुगतान योगदान की तिथि से देय होगा।

1. योगदान के समय श्री शर्मा को असैनिक शल्य चिकित्सक-सह-मुख्य चिकित्सा पदाधिकारी से अपना स्वास्थ्य प्रमाण पत्र, शैक्षणिक योग्यता प्रमाण पत्र एवं जन्म तिथि प्रमाण पत्र प्रस्तुत करना होगा।



2. यह नियुक्ति बिल्कुल अस्थायी है तथा किसी भी समय बिना किसी पूर्व सूचना के सेवा समाप्त की जा सकती है।
3. दिनांक 01.09.05 से पेंशन की नई स्कीम लागू हो गयी है। श्री शर्मा के मामलों में भी वहीं पेंशन स्कीम लागू होगी।
4. योगदान के लिए किसी प्रकार का मार्ग व्यय देय नहीं होगा एवं योगदान करने की तिथि से ही उनकी नियुक्ति मान्य होगी।
5. आदेश निर्गत की तिथि से 15 दिनों के अन्दर योगदान देना होगा नहीं तो योगदान स्वीकृत नहीं किया जा सकता है।
6. श्री शर्मा के वेतन का भुगतान उनके प्रथम वेतन विपत्र अधोहस्ताक्षरी के प्रतिहस्ताक्षर होने के उपरांत ही किया जायेगा।

ह0/—
(डा0 सुरेन्द्र प्रसाद)
निदेशक प्रमुख,
स्वास्थ्य सेवाएँ, बिहार, पटना

ज्ञापांक—611(4) / पटना, दिनांक —13.3.13

प्रतिलिपि— सिविल सर्जन, मुजफ्फरपुर को सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

प्रतिलिपि— क्षेत्रीय उप निदेशक, स्वास्थ्य सेवाएं, मुजफ्फरपुर को सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

प्रतिलिपि— संयुक्त सचिव, सामान्य प्रशासन विभाग, बिहार, पटना को उनके आदेश सं0 8403 दिनांक 26.07.11 के प्रसंग में सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

प्रतिलिपि— प्रबंध निदेशक, बिहार स्टेट कन्स्ट्रक्शन कॉरपोरेशन लिमिटेड, ख्वाजा ईमली, अनिवसाबाद, पटना—800002 को सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

प्रतिलिपि— श्री ईश्वर चन्द्र शर्मा, टंकक, बिहार स्टेट कन्स्ट्रक्शन कॉरपोरेशन लिमिटेड, ख्वाजा ईमली, अनिसाबाद, पटना—800002 स्थायी पता— ग्राम—अहलादपुर, पो0—हरिदासपुर, थाना—कॉंटी, जिला—मुजफ्फरपुर को सूचनार्थ प्रेषित।

प्रतिलिपि— कोषागार पदाधिकारी, मुजफ्फरपुर को सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

प्रतिलिपि— जिला पदाधिकारी, मुजफ्फरपुर को सूचनार्थ प्रेषित।

प्रतिलिपि—प्रधान सचिव, स्वास्थ्य विभाग के प्रधान आप्त सचिव को सूचनार्थ प्रेषित।

प्रतिलिपि—निदेशक प्रमुख, स्वास्थ्य सेवाएं, बिहार के निजी सहायक को सूचनार्थ एवं आवश्यक क्रियार्थ प्रेषित।

ह0/—
निदेशक प्रमुख,
स्वास्थ्य सेवाएं, बिहार, पटना”

Underline supplied

7. Clause-3 stipulates that for Respondent's



absorption read with his service particulars would be in respect of New Pension Scheme. The Respondent- Ishwar Chandra Sharma has not assailed the aforementioned Clause-3 and so also absorption order to the extent that he is entitled to absorption on par with Mukteshwar Prasad Singh, the date on which their services have been absorbed. Further, it is to be noticed that Respondent- Ishwar Chandra Sharma case is not comparable with Mukteshwar Prasad Singh for the reasons that Mukteshwar Prasad Singh and others, who were working in Board or Corporation, their services have been deputed to State Government department in the year 1997. Therefore, this Court has taken note of the fact that they were on deputation for a long period more than decades. In that context, it was directed for absorption while counting service rendered in the respective Corporation or Board. On the other hand, in the present case, Respondent- Ishwar Chandra Sharma was not deputed to any of the department and he continuously worked in the Bihar State Construction Corporation Ltd. from the date of his appointment namely 28.03.1977 till he was relieved from the Corporation on 20.03.2013. It is to be noted that as on 20th March, 2013, Old Bihar Pension Scheme was not existing in the eye of law. What was prevailing as on 20th March, 2013 is New Pension Scheme



introduced in the year 2005. As long as Respondent- Ishwar Chandra Sharma services have not been absorbed with retrospective date i.e. one day prior to introduction of New Pension Scheme, the Respondent is not entitled to have the benefit of old pension scheme for the reasons that it ceases as and when new pension scheme was introduced in the year 2005. These material information have not been taken note of and apprised by the learned Single Judge. In other words, service particulars should have been compared on par with Mukteshwar Prasad Singh and Respondent- Ishwar Chandra Sharma. In the absence of comparing service particulars, the Respondent- Ishwar Chandra Sharma has not made out a case that he is entitled for counting services rendered in Bihar State Construction Corporation Limited from 15.05.1977 to 23.03.2013 and from 23.03.2013 to 30.09.2015, the date on which he has attained age of superannuation and retired from service. Thus, Appellants have made out a case so as to interfere with the learned Single Judge.

8. Accordingly, order of the learned Single Judge dated 19.07.2022 passed in C.W.J.C. No. 11654 of 2018 stands set aside. The C.W.J.C. No. 11654 of 2018 filed by the Respondent stands rejected.



9. Accordingly, the present Letters Patent Appeal
No. 584 of 2022 stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Manish/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	26.04.2025
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