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**(2004) 04 JH CK 0009**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 4406 of 2002**

Girija Nand Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 19-04-2004**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2004) 2 JCR 472**

**Hon'ble Judges : Amareshwar Sahay, J**

**Bench : Single Bench**

**Advocate : Ashoke Kumar Sinha, for the Appellant; S. Srivastava, SC-III, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ application is for direction to the respondents to fix the pension of the petitioner after counting the services rendered by him as Extra Clerk from March, 1952 to 28.11.1972 in addition of his services as Permanent Clerk from 29.11.1972 to 29.2.1988 the date on which he has retired.

3. The question is as to whether the services rendered by a person as Extra Clerk can be counted for his pensionary benefits or not, has been decided in the case of Upendra Prasad Vs. The state of Bihar and Others , wherein it has been held as follows :--

" 15. Had the petitioner not been appointed as temporary Clerk while rendering continuous service as extra Clerk he might not have at all been entitled to pension and pensionary benefit. In the instant case, while rendering continuous service as extra Clerk for a long period, the petitioner was appointed to the post of temporary Clerk and thereafter as permanent Clerk in the same establishment and the Government by the Order/Instruction dated 8th July, 1987 clarified that

appointment from the post of extra Clerk to the post of temporary Clerk should be treated as promotion. This Court can also take judicial notice of the fact that both the Central Government and the State Government are making schemes for granting old age pension to the citizens. The petitioner had rendered public service continuously from April, 1957 to 23.1.1981 as extra Clerk and denial of pensionary benefit in respect of the said period by taking supertechnical and pedantic approach is unjust and inequitable. The decisions of this Court in the case of Janki Tante and Others, CWJC No. 7379 of 1992, on which the learned Standing Counsel has placed reliance has no application on the facts of the present case. In that case this Court held that a lecturer or an employee of a College was not entitled to claim pensionary benefit for the period of service rendered by him under the Managing Committee of the Private College before nationalization thereof by the Government. But the petitioner after being appointed as extra Clerk by the District Sub-Registrar under the provisions of the Bihar Registration Manual, 1946, had rendered continuous public service holding civil post under the Government during the period in question.

16. For the reasons stated above, I am inclined to hold that the continuous services rendered by the petitioner as extra Clerk from April, 1957 till his appointment as temporary Clerk, should be counted as qualifying service for the purpose of pension and pensionary benefit only. The petition is, therefore, allowed and respondents No. 1 and 2 are directed to pass appropriate order in exercise of power u/s 59 of the Bihar Pension Rule declaring that the service rendered by the petitioner as extra Clerk from April, 1957 till the date of his appointment as temporary Clerk should be treated as qualifying service for the purpose of pension and pensionary benefit only. The respondent shall ensure that passing of the appropriate order under Rule 59 of the Bihar Pension Rules and payment of consequential revised pension to the petitioner in pursuance of the order is completed within six months from the date of receipt of a copy of this order."

4. Relying on the aforesaid decision, this Court in the case of Kauleshwar Prasad v. The State of Jharkhand and Ors., reported in 2004 (2) JCR 124, has also held that the services rendered by a person on the post of extra Clerk has to be counted for fixing his pension, treating the appointment to the post of a permanent Clerk as promotion from the post of extra Clerk to a permanent Clerk. The present case is fully covered by the aforesaid decision.

5. It is held that the pension is to be fixed after counting the services rendered by the petitioner from 1952 to 1972 as extra Clerk.

6. Let the petitioner file representation before respondent No. 2 Inspector General (Registration), Jharkhand, Ranchi alongwith a copy of this order. The Inspector General (Registration), Jharkhand, Ranchi is hereby directed to pass an order re-fixing the pension of the petitioner after counting the period of services of the petitioner as extra Clerk from March, 1952 to 28.11.1972, within a period of four weeks from the date of receipt production of a copy of this order ensure

the payment of retiral dues to the petitioner within a period of three months thereafter.

7. Accordingly, this application is allowed with the above directions.