**(2009) 12 PAT CK 0016**

**In the Patna High Court**

**Case No :** LPA No. 20 of 2006

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| The Urban Development Department, Govt. of Bihar and Others | APPELLANT |
| Vs | |
| Surendra Narayan Jha and Others | RESPONDENT |

**Date of Decision :** 15-12-2009

**Acts Referred:**
Bihar Service Code, 1952 — Rule 11, 274, 276, 278

**Citation :** (2009) 12 PAT CK 0016

**Hon'ble Judges :** S.K. Katriar, J;Kishore K. Mandal, J

**Bench :** Division Bench

## Judgement

S.K. Katriar and K.K. Mandal, JJ.—The State of Bihar has preferred this appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna and raises a grievance with respect to the judgment dated 6.10.2005, passed in CWJC No. 16590 of 2004 (Surendra Narayan Jha v. State of Bihar and Ors.), whereby the Petitioner''s claim for pension for the period he was on foreign deputation and on foreign service, has been allowed.

2. The basic facts essential for disposal of the appeal are not in dispute and may be briefly indicated. The Petitioner (Respondent No. 1 herein) was appointed in the services of the Bihar Government as an Assistant Town Planner on ad hoc basis on 13.10.1969. His services as such were confirmed on 1.3.1974. The Government of India seems to have entered into an agreement with the Government of Lesotho to send on deputation Project Managers to work there which has been described in the communication as "Deputation of Projects Manager for assignment to the Government Lesotho under the ITEC Programmed of the Ministry of External Affairs", the Petitioner was selected for deputation and he was on authorized deputation from 13.1.1977 to 21.1.1981. During the period 8.9.1980 to 31.3.1986, he served the Government of Kenya without permission of the Government of Bihar and/or the Government of India. He seems to have re-joined Government of Bihar in the Department of Urban Development on

1.4.1986, and served upto 1.12.1987. He resigned his service with the Bihar Government on 1.12.1987, which was rejected. However, without permission of the State Government, he re-joined the Government of Lesotho on 4.1.1988, and informed the Bihar Government of the same on 10.4.1988. Thereafter, he raised his claim for pension from the Bihar Government which was declined. He approached this Court by preferring CWJC No. 5736 of 2003 2004 (1) PLJR 50, which was disposed of by order dated 10.9.2003, whereby the departmental Secretary was directed to examine the Petitioner''s case, and pass appropriate orders in accordance with law. Orders have been passed by the concerned authority. Dissatisfied with the same, the Petitioner preferred the writ petition bearing CWJC No. 16590 of 2004, which has been allowed. Aggrieved by the same, the State of Bihar has preferred the present appeal.

3. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The first and foremost thing which arises is determination of the authorized period of the Petitioner''s deputation to the Government of Lesotho. It appears to us on a perusal of the materials on record that he had served the Bihar Government from 13.10.1969 to 12.1.1977. It is further manifest that he was on authorized deputation to the Government of Lesotho from 13th January, 1977 to 21st January, 1981. His services with the Government of Kenya, or the Government of Lesotho from 1.4.1986 till his superannuation excepting the brief period of 1.4.1986 to 1.12.1987, was wholly unauthorized and indeed acts of grave indiscipline. His letter of resignation. was also not accepted notwithstanding which he re-jojned the Government of Lesotho. We, however, take a liberal view of the matter and hold that the Petitioner was on authorized deputation to the Government of Lesotho from 13.1.1977 to 21.1.1981. In other words, the period 13.10.1969 to 21.1.1981 shall be counted for purposes of pensioners benefits. It appears from the provisions of the Bihar Pension Rules that in order to earn the benefit of pension, an employee has to put in minimum service of ten years. Respondent No. 1 herein will, therefore, be deemed to have completed the qualifying period.

4. We are, however, required to consider the Rule 276 of the Bihar Service Code Which is reproduced herein below for the facility of quick reference:

276. (1) (a) While a Government servant is in foreign service, contributions towards the cost of his pension be paid to general revenues on his behalf.

(b) If the foreign service is in India, and the Government servant is in superior service, contributions must be paid on account of the cost of leave salary also.

(c) Contributions due under Clauses (a) and (b) above shall be paid by the Government servant himself, unless the foreign employer consents to pay them. They shall not be payable during leave taken while in foreign service.

(d) By special arrangement made under Rule 274 (b) contributions on account of leave-salary may be required in the case of foreign service out of India also, the contributions being paid by the foreign employer.

 

(2) (a) The rates of pension contributions are designed to secure to the Government servant the pension that he would have earned by service under Government, if he had not been transferred to foreign service.

(b) The rates of contributions for leave-salary are designed to secure to the Government servant leave-salary on the scale and under the conditions application to him. In calculating the rate of leave-salary admissible the pay drawn in foreign service, less, in the case of Government servants paying their own contributions, such part of pay as may be paid as contribution, will count as pay for the purpose of Rule 11.

It is thus evident that the Government servant on foreign service shall be entitled to pension for the period of such authorized deputation provided the cost of his pension is deposited to the general revenues of the Bihar Government on his behalf. It appears that such contribution has not been deposited so far which is an destruction in the success of the writ petition. We, however, take note of the clauses 5 and 18 of the Resolution of the Finance Department, Government of Bihar No. 3014, dated 31.7.1980, which are reproduced herein below for the facility of quick reference:

5. The admitted position is that the Bihar Government has not so far received the Respondent''s cost of pension. We further take note of the submissions made by learned Counsel for Respondent No. 1 that he is prepared to pay the cost of his pension to the Bihar Government in terms of Rule 276 of the Bihar Service Code.

6. In the result, we direct that the period from 13.10.1969 to 21.1.1981 shall qualify for the purpose of pension. He shall deposit the cost of pension in terms of Rule 276 read with Rule 278 of the Bihar Service Code with interest from the date (s) he was required to deposit the same with the Bihar Government. He shall be entitled to pension with statutory interest from the date of entitlement till the date of payment. It is made clear that the amount payable by the Respondent No. 1 herein shall be adjusted against the amounts due to him without the necessity of actual deposit by him. The order of the learned Single Judge is accordingly modified. In the circumstances of the case, there shall be no order as to costs.

 