

**SUPREME COURT OF INDIA**

Bihar State Electricity Board

Vs.

Akhil Krishna Mitra

C.A.No.15066 of 1996

(K. Ramaswamy and G. B. Pattanaik, JJ.)

18.11.1996

**ORDER**

1. Leave granted.
2. We have heard learned counsel on both sides.
3. This appeal by special leave arises from the judgment of the High Court of Patna, made on December 7, 1993, in C. W. J. C. No. 11515/92.
4. The admitted position is that the respondent was appointed as a Government servant in June 1950 and was sent on Deputation to the Appellant -Board on August 4, 1959. He was absorbed in the Electricity Board on November 25, 1970 and retired from service on April 30, 1984. The question is : as to for which period the Board is liable to pay the pension to the respondent? The High Court found that since he was on deputation from the Government service from June 1950 to August

1959, the appellant-Board should pay the pension and recover proportionately the pension from the Government. The Government had declined to bear that burden and, therefore, the Board has come up in appeal in this matter. We have issued the notice to the State Government. The State Government have filed the counter. It is stated in the counter affidavit that under Bihar Pension Rules Part 2 Appendix 5-2(iii), unless a Government servant completes 10 years of service in the State Government service, he is not entitled to the pension proportionately. Thereafter, notice was issued to the respondent-employee. It is contended by respondent-employee that the respondent had not voluntarily gone on deputation; but when we read out the averments made in the affidavit filed in the High Court, we find that he had not specifically stated so. Subsequently, he so pleaded in the counter affidavit filed in this Court that he was sent on deputation to the Electricity Board against his wishes. Under these circumstances, we cannot decide the controversy in this appeal though the respondent has asserted to that effect. Admittedly, for the period the respondent was under the Board's service, he is entitled to the pension and is being paid w.e.f. the month in which he was sent on deputation. The actual controversy pertains to the period from June 1950 to August 1959. In view of the fact that this is a disputed question, appropriate course would be that the respondent-employee should make a representation to the Government and Bihar State Government would consider and dispose of the representation with speaking order, according to law, within a period of three months from the date of the representation.

5. The appeal is accordingly disposed of. It is stated that in similar situation some persons whose names were furnished in the application were granted benefits by the Government. It appears that the Board has paid the amount pursuant to the direction of the High Court; it would be for the Board to approach the High Court and take appropriate direction.

Order accordingly.