

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7462 of 2011

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1. Nirmala Devi Wife of Late Rajendra Prasad Thakur R/O Vill.- Brijmoha Thakur Lane, P.O. & P.S.- Barai, Distt.- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar Through Secretary Water Resource Department, Government Of Bihar, Patna
2. The Chief Engineer (Mech) Water Resource Department, Government Of Bihar, Patna
3. The Superintending Engineer (Mech) Irrigation Anchal Mithapur, Patna
4. The Executive Engineer, Regional Mech. Division Bhagalpur
5. The Assistant Engineer, Regional Mech. Sub-Division, Bhagalpur
6. The Accountant General, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. PANKAJ KUMAR SINHA, Adv.

For the Respondent/s : Mr. PRASHANT PRATAP GP6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 23-02-2015

Shivaji Pandey,J

Heard learned counsel for the petitioner, for the

State and for the Accountant General, Bihar.

In this case, petitioner's husband (for the sake of convenience 'Petitioner' will be mentioned) was appointed on daily wage basis on 2nd January 1981 and later on he was brought in the work charge establishment in 21st January 1991 by the Chief Engineer (Mech) Water Resources (Irrigation) Department and again vide order dated 5th October 1993, petitioner along with others was reverted to muster roll. Later on this Court in LPA No. 274 of 1996 and analogous cases, petitioner along with

others were brought to work charge establishment with minimum scale of pay but this Court refused to give any relief with regard to pension, since he worked in the work charge establishment till his superannuation i.e. 30th June 2010.

Counsel for the petitioner submitted that petitioner's husband had worked for more than 15 years in the work charge establishment as such, he cannot be deprived of his pension, though other retiral benefits, such as, gratuity, leave encashment and provident fund amount have already been paid. He has submitted that as he had worked for such a long period, it should be presumed that he has worked in the permanent establishment and the period that he had spent in the work charge establishment be deemed that he was holding substantive post and, as such, he cannot be deprived of the benefits.

In support of his contention, counsel for the petitioner has relied on certain judgments of this Court as well as of the Jharkhand High Court, such as LPA No. 836 of 1997 (Koshi Project Workers' Association and another v. State of Bihar & others) and the Full Bench judgment of the Jharkhand High Court reported in 2005(3) JCR 9 (Ram Prasad Singh and another .V. State of Jharkhand and others), 2001(3) PLJR 15 (Tulsi Prasad Singh v. State of Bihar), 2004(1) PLJR 485 (Mostt.



Roopkali Kuer v. State of Bihar), 2008(2) PLJR 762 (Sri Parmeshwar Paswan v. State of Bihar), 2013(4) PLJR 557 (State of Bihar v. Sheela Devi) and 2014(4) PLJR 229 (FB) (State of Bihar v. Bhagwan Singh). He has also supported his claim on the strength of Circular of the State Government dated 31st March 2004. There the Government has liberalized the pension scheme included the portion, the employees discharged the duty in work charge establishment for the purpose of entitlement submitted that petitioner cannot be deprived of the said benefit.

Counsel for the State has submitted that for entitlement of pension, a person must be appointed on substantive post and merely working as daily wage earner or in the work charge establishment will not create entitlement for pension. He has further submitted that Rules 58, 60 and 61 of the Bihar Pension Rules provide that a person will be appointed on substantive basis will be treated to have been appointed on pensionable post working in work charge establishment will not be treated to have been appointed on substantive basis. As the petitioner was never brought in the permanent establishment, though he had worked in the work charge establishment on minimum pay scale that does not entitles him to be treated on the substantive post making him entitled for pension. He further

submitted that this Court in Single Bench and Division Bench has specifically held that the person appointed in the work charge establishment is not said to have been appointed on substantive post and not entitled to pension in terms of Bihar Pension Rules.

In support of his contention, he has relied on the judgment passed in CWJC No. 6504 of 2009 (Radhika Devi v. State of Bihar and others) issue was decided will not be entitled to benefit of pension.

Having considered the rival contention of the parties, the primary issue that has been raised is as to whether the period spent by a person who was earlier working on daily wages and later on brought to work charge establishment will be treated to have worked on substantive post in terms of Rule 56 of the Bihar Pension Rules.

In the present case, this Court has to examine the status of work charge employees, as in the present case of the petitioner who was in the muster roll was brought to work charge establishment and subsequently again he was reverted back to muster roll but on account of judgment in LPA No. 274 of 1996, he was again brought back to work charge establishment where he worked for more than 15 years.

The status of an employee in the work charge



establishment has come for consideration in different judgments before the Hon'ble Supreme Court as well as before this Court. There are two types of establishment, one general establishment and another work charge establishment, workers of work charge establishment means an establishment of which the expenses, including wages and allowances of the staff, are chargeable against work. A work charge establishment differs from the regular establishment which is permanent in nature.

The setting up and continuation of work charge establishment is dependent upon the Government undertaking, project or a scheme of a work and the availability of the fund for executing it. The employees engaged in the work charge establishment, their nature of work and duties performed by them, their recruitment and condition of services are different than those employed in the regular establishment. The regular establishment and the work charge establishment, both are two separate types of establishment and the employees employed on those establishments, thus form two separate and distinct classes.

In the case of Jaswant Singh and others vs. union of India and others, reported in (1979)4 SCC 440, the Hon'ble Supreme Court has examined with bird's eye view and held that



a work charge establishment broadly means an establishment of which expenses including wages and allowances of staff are chargeable to the work. The pay and allowance of the employees who are borne on the work charge establishment are generally shown as a separate sub-head of the estimated cost of the work. The work charge employees are engaged on temporary basis and their appointments are made for execution of specified work. From the very nature of their employment, their services automatically come to an end on the completion of the work for the sole purpose of which they are employed. The separate set of rules are framed for the persons engaged in the work charge establishment and the employees working on the regular establishment, it cannot be said to be illegal and arbitrary as they are governed in a different manner under different Rules and the action of the Government cannot be said to be arbitrary and discriminatory.

The status of employees of charge establishment came for consideration in the case of State of Rajasthan vs. Kunji Raman, reported in (1997)2 SCC 517 and the Hon'ble Supreme Court has taken a view that the employees employed in the work charge establishment constitute a different class cannot claim at par with the employees employed in the regular establishment and



further held that framing of two sets of Rules, one for the employees of the work charge establishment and another for the employees of the regular establishment cannot be said to be illegal, arbitrary and discriminatory, as the Court has held that the appointment of the employees of the regular establishment is quite different and distinct to the employees employed in the work charge establishment. In the case of the employees employed in the regular establishment, the cost is borne from the general fund whereas in the case of employees employed as work charge establishment the cost including wages are borne on the Project. It will be relevant to quote Para 6, 7 and 8 of the judgment which is as follows:

“6.A work-charged establishment as pointed out by this Court in Jaswant Singh Vs Union of India broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to “works”. The pay and allowances of employees who are borne on a work-charges establishment are generally shown as a separate sub-head of the estimated cost of the works. The work-charged employees are engaged on a temporary



basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.

8. A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a “work” and availability of funds for executing it. So far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the



persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in a arbitrary and discriminatory manner by the Government. It is well settled that the Government has the power to frame different rules for different classes of employees. We, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule 2 of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Court”.

This Court also considered the issue of nature of work and status of the employees in the work charge establishment in the case of Dilip Kumar Bhattacharya vs. State of Bihar reported in 2004(4) PLJR 889. In that case, the Court has said that the persons employed in the work charge



establishment are the same as that of temporary Govt. servant in the matter of leave and other allowances, but their dependents cannot claim appointment on the com-passionate ground, in view of the fact that there is no policy decision that on the death of work charge employee, the adhoc employees, causal employees, their dependents are entitled to compassionate appointment. The status of the employees employed in the work charge establishment is at par with the temporary employees and their status cannot be at par with the employees appointed on permanent basis in regular establishment. It is relevant to quote Para-12 of the judgment which is as follows:

“Para-12: If the employees are working in the work-charged establishment just on temporary basis, their dependents cannot claim appointment on compassionate ground in view of the fact that there is no policy decision that on the death of work-charged employees, ad hoc employees and causal employees, their dependents are entitled to compassionate appointment. There cannot be such policy for simple reason that the object of compassionate appointment is to mitigate the hardship caused to the family of the deceased employee due to sudden demise of bread earner. It is not a mode of appointment. Mere death of an employee does not entitle the family to get compassionate



appointment unless there is financial crunch in the family. The Constitutional mandate as contained in Articles 14 and 16 provides that there should be equality in the matter of employment. Employment is national property and that should be distributed to the citizens by following rational, reasonable and fair procedure and the appointment should be made by open invitation of persons fulfilling requisite qualifications for a post. However, the Apex Court upheld the policy of compassionate appointment as not violative of Articles 14 and 16 of the Constitution on the ground that it has object to meet, i.e., the purpose of appointment on compassionate ground is to mitigate the hardship to the family of the deceased employee and thus in exception to the equality clause such appointments form class themselves. However, merely death of an employee is no ground for appointment unless the said condition is fulfilled otherwise the appointment will be violative of Article 14 and 16 of the Constitution of India. With regard to the daily wages, ad hoc, casual and apprentice workers the Supreme Court in the case of State of Haryana vs. Rani Devi, reported in (1996)5 SCC 308 has held that if the scheme regarding appointment on compassionate ground is extended to all sorts of casual, ad hoc employees including those who are working as apprentices, then such

scheme cannot be justified on constitutional grounds.”

The Jharkhand High Court in the case of Ram Prasad Singh vs. State of Jharkhand and others, reported in 2005(3) JCR 9 (Jharkhand FB) considered the claim of the employees employed in the work charge establishment, including concerning to the status of the work charge employees. The Court has held that the work charge employees have no right to hold a post nor have any right to continue against such post till the date of superannuation. They are engaged either on daily wages or on the temporary basis and they are appointed for execution of a specific work. Their services automatically come to an end on completion of the work for the sole purpose for which they are employed. If the work charge employee has no right to continue in service till the date of superannuation, one cannot claim the right to a dependent of a deceased work charge employee for consideration of his case for compassionate appointment. It will be relevant to quote certain paragraphs of the judgment which is as follows:

“Admittedly, the work-charged employees have no right to hold a post nor have any right to continue against such post till the date of superannuation. They are engaged either on daily wage or on temporary basis and they are appointed for

execution of a specified work. Their services automatically come to an end on completion of the work of the sole purpose for which they are employed. In such a situation, if the work charged employee has no right to continue in service till the date of superannuation, one cannot claim right a dependant of a deceased work charged employee for consideration of his case for appointment on the ground of compassion.

Mere death of an employee does not entitle his family to claim such source of livelihood. Admittedly, work charged employees have no right to continue in service of the State even till the age of superannuation. There is no guidance of job of a work charged employee, as his job comes to an end on completion of work. In such a situation, a dependant cannot claim that the family of the employee will have economic ruination, the job having been suddenly taken away.

In the case of Regional Manager, A.P.S.R.T.C. v. M. Sampooramma, reported in 1999 SCC (L & C) 1162, the Supreme Court having noticed the decision of the employer not to make any fresh appointment, such decision of the employer being bona fide, held that it would not be proper for the court to question the same nor it will be proper to direct the employer to consider appointment of person on compassionate ground.

Merely, because vacancy exists, it is not proper for the High Court to direct the respondents to consider the case for compassionate appointment, ignoring the ban on any fresh appointment.

As the work charged establishment is temporary in nature, the dependant of a deceased work charged employee has no right to claim compassionate appointment.”

In view of aforesaid discussion, this Court is of the view that the employees employed in the work charge establishment, their status is not far better than the persons employed on temporary basis. Even though he continues to work reaching the age of superannuation or has died in harness, he cannot be said to have been appointed permanently on substantive basis.

Now the second question that would arise is as to whether an employee who has superannuated while in the work charge establishment will be entitled to pension or the dependent could claim family pension, as the dependent will get the family pension provided the employee employed was entitled to pension. For arriving to a definite conclusion, certain provisions of the Bihar Pension Rules will be relevant for consideration. Rule 58 of the Bihar Pension Rules is as follows:

Rule 58: The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:

“First – The service must be under Government.

Second – The employment must be substantive and permanent.

Third – The service must be paid by Government.”

Rule 58 of the Bihar Pension Rules stipulates three conditions for being entitled to pension, first is the service must be under the Government, another - employment must be substantive and permanent and wages must be paid by the Government. An employee employed in the work charge establishment does not have the second qualification as the persons employed in the work charge establishment cannot be said to have been appointed substantively and on permanent basis.

Rule 61 of the Bihar Pension Rules also provides that service does not qualify unless the Government servant holds substantively a post in the permanent establishment. In such view of the matter, if a person is employed in the work charge establishment appointed substantively on permanent basis having been explained his status, cannot be better than temporary employee.



The issue of entitlement of pension came for consideration in an unreported judgment in the case of Radhika Devi v. State of Bihar CWJC No. 6504 of 2009 His Lordship considered the issue of entitlement and held that the person employed in the work charge establishment is not entitled to pension under the Bihar Pension Rules. In the Division Bench in the case of Ful Kant Giri v. State of Bihar and others, LPA No.149 of 2010 there the court also held that a work charge employee is not entitled to the benefits of pension.

The right and status of work charge establishment came for consideration before this Court in Rajendra Chaudhary and others.. vs. The State of Bihar. The Court in the Division LPA No. 274 of 1996 (Rajendra Choudhary v. State of Bihar) Bench refused to give the benefit for regularization of employees employed in the work charge establishment merely on account of continuation of service directed for payment of their wages at lowest time scale of pay, but refused to treat at par with the employees employed in the regular establishment. It will be proper to deal with the judgment relied on by the petitioner on unreported judgment of Koshi Project Workers' Association and anr. v. State of Bihar LPA 836 of 1997. There the Court considered the nature of permanent establishment vis-à-vis a

work charge establishment as well as the status of persons engaged in the work charge establishment which is quite different to the persons employed in the permanent establishment. It is relevant to quote as follows:

“There is no dispute that there is a great difference between work charge establishment and permanent establishment of the State., Whereas permanent establishment is permanent and will continue for ever: the work charge establishment is for a temporary purpose to complete the work for which the establishment has been established. Accordingly, a person engaged to discharge the duties of a work charge establishment will loose his retirement the moment the work of that establishment would come to an end. In those circumstances admittedly there is a great difference between an employee working in the work charge establishment and an employee working in the permanent establishment. Their rights and status are fundamentally different.

But the Court on consideration of the instruction dated 4th December 1949 where it has been provided that the post of work charge establishment which are permanent in nature is required for 12 months in a year and for long indefinite period will be made permanent and included in the permanent

establishment and men employed on those posts having one year approved service will be included amongst the permanent government employee.

The Court has further considered the Gazette Notification dated 16th April 1950 which was treated to be a rule u/s 309 but the question would arise unless the establishment on the basis of aforesaid gazette notification is treated to be a regular establishment and the persons employed therein is treated to be appointed on substantive post. Merely because the persons have worked for more than the prescribed limit cannot automatically be treated to have been appointed on substantive basis to substantive post, he will continue to be an employee in the work charge establishment, as such, does not qualify the 2nd condition of Rules under the Bihar Pension Rules in such view of the matter husband of petitioner would not have been entitled to pension in consequence, the dependents cannot claim family pension and, as such, this petition is dismissed.

Jay/-

(Shivaji Pandey, J)

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