IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12 of 2015

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Mahesh Mahto Son of Narain Mahto Resident of Village - Munsurpur Vidupur, P.O. - Chaksikandar, District - Vaishali.

.... Petitioner/s

Versus

1. The High Court of Judicature at Patna through the Registrar General, Patna HIgh Court, Patna.
2. The Registrar Administration, Patna High Court, Patna.
3. The Court Officer, Patna High Court, Patna.
4. The Law Secretary, Government of Bihar, Patna.
5. The A.R. (Accounts), Patna High Court, patna.
6. The Accountant General (A AND E), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Jain, Adv
For the State	:	Mr. A.Ujjwal
For the A.G. Bihar	:	Mr. Binod Kumar Labh, Advocate, SC IA & AD
For the P.H.C	:	Mr. Mrigank Mauli, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

2 03-02-2015 Heard learned counsel for the parties as with regard to the following reliefs, prayed in this writ application:-

> *"That by this writ petition the petitioners craves indulgence of this Hon'ble Court for issuance of a writ in the nature of Mandamus by directing the respondents to pay the retrial benefits to the petitioner by counting his service from the date of initial appointment in the Government service under the Patna High Court which is the full length of service started from daily wager/regular Majdoor till the date of superannuation as the past service of the petitioner has not been calculated for payment of retrial dues admissible under the law."*

2. Learned counsel for the petitioner, submits that

when the respondent authorities of Patna High Court have counted the services for the purposes of retirement of the petitioner from 01.01.1969, so as to retire him from service on completion of 42 years of service, they cannot exclude the period from 01.01.1969 to 25.08.1983, on the ground that the petitioner was not holding substantive post or was working on permanent basis. In this regard, he also relies on an unreported judgment dated 10.11.1988, in C.W.J.C No. 9547 of 1997 in the case of Chandrika Rai and others Vs. State of Bihar and others which was affirmed in appeal by an order dated 05.01.1999 in L.P.A. No. 1343 of 1998 against which even S.L.P. was filed by the State of Bihar which was dismissed by the Apex Court in its order dated 28.02.2002. He has also placed his reliance on another unreported order of the Apex Court dated 26.08.2013, in the case of Union of India vs Mita for supporting the proposition that appointment even on casual basis would qualify for calculation of full pension and retirement benefit.

3. Mr. Mirgank Mauli, learned counsel appearing on behalf of Patna High Court on the other hand has submitted that the petitioner would be bound by the provision of Bihar Pension Rules which in no uncertain terms provide that the qualifying period of grant of pension would be only from the date the employment is substantive and permanent. He has further submitted that though the petitioner came to be engaged as Mazdoor on 01.01.1969, but his substantive and permanent appointment on the post of peon was made only w.e.f 25.08.1983 and therefore, the petitioner's qualifying period of service for payment of his retirement benefits would be for the period from 25.08.1983 to 02.09.2013.

4. Having regard to the aforementioned submission of the parties, the first and foremost issue would be as to what was the status of the petitioner when he had entered into service as Mazdoor on 01.01.1969 in establishment of Patna High Court. The

petitioner has not brought on record any appointment letter to show that on 01.01.1969, his appointment was made on substantive basis. This aspect of the matter however gets clear from the Office Order No. 81 (Misc.) dated 25.12.2013 relating to grant of benefit of M.A.C.P. on completion of thirty years of his service counted only from 20.08.1983, in which the date of substantive appointment of the petitioner has also been shown to have been made only on 20.08.1983.

5. There being no other document on record, this Court will have no difficulty in holding that the substantive appointment of the petitioner against the permanent post of peon was made only on 20.08.1983.

6. The effect of this substantive appointment of the petitioner on 20.08.1983 will therefore have a crucial bearing on payment of his pension because Rule-58 of Bihar Pension lays down as follows:-

> "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.
These three conditions are fully explained in the following sub-stations."

7. The second condition in Rule 58 of Bihar Pension Rule relating to substantive and permanent employment has been further explained in Rule 61 which reads as follows:-

"61. Service does not qualify unless the Government Servant holds substantively a post on a permanent establishment.

8. In view of the aforementioned provision of Rules-58 and 61 of Bihar Pension Rules this Court will have no difficulty in holding that the petitioner's substantive appointment from 20.08.1983 to the date of his retirement dated 02.09.2013, alone shall qualify for grant of pension and other retirement benefits.

9. Coming back to the issues decided by this Court in the case of Chandrika Rai (supra), it has to be

noted that in that case the petitioners were working as Seasonal workers in Revenue Division of Irrigation Department who even after their continuation in service for more than thirty eight years were not given any retirement benefit. This Court having examined the connected provisions governing their service condition has in fact gone to hold that the petitioners of that case of Chandrika Rai (supra) ought to have been regularized in view of an earlier judgment of this Court dated 06.12.1983 passed in C.W.J.C No. 8628 of 1992. Having held so, this Court had proceeded that as the services of the persons were deemed to have been regularized from the date of their first appointment they were also held entitled for pension and other retirement benefits.

10. This Court therefore fails to understand as to how the facts of Chandrika Rai (supra) can be made applicable in the case of the petitioner. No such order of regularization was ever passed in the case of the

petitioner prior to 20.08.1983 and on 20.08.1983 he was actually appointed as a peon in the permanent establishment without giving him any benefit of past service of his working as Mazdoor. Let it be noted that such engagement of the petitioner on the post of Mazdoor was a casual appointment on daily wages and not a substantive appointment in the permanent establishment in the prescribed pay scale.

11. In that view of the matter whatever ratio has been laid down in the case of Chandrika Rai (supra) cannot be made applicable ipso facto also to the case of the petitioner.

12. Reverting back to the case of Mita (supra) it is found that what was under consideration before the Apex court was a judgment of the High Court in relation to payment of pension and retirement benefit of an employee who was appointed initially as casual labourer in 1966 and subsequently was granted temporary status on 10.03.1971 and was finally regularized w.e.f.

25.01.1981. The Apex Court having taken note of the statutory provisions governing casual employees of the Government of India had gone to hold that past service prior to regularization ought to have been taken into account for the purpose of computing retirement benefit. That case infact was relating to regularization and therefore, the same again will have no application to present case, which is governed by Bihar Pension Rules.

13. Every service Rule has got its own advantages and disadvantages. Here in the present case when in the High Court initially a person is being engaged on casual basis as a Mazdoor on daily wages he does not get his substantive appointment. After availability of the permanent and sanctioned post, such daily wages Mazdoor are appointed with the benefit of payment of full salary in the prescribed scale of peon and eventually earn promotion on the post of Zamadar. This has been the practice in almost all the appointments of Mazdoor made in the Patna High Court for ages and

therefore, there can be no dispute that the period of rendered by the petitioner as daily wage employee as a Mazdoor w.e.f. 1.1.1969 to the date of his substantive appointment on 20.8.1983 would not qualify for being given the retirement benefit in terms of Rules 58 and 61 of Bihar Pension Rules.

14. That being so, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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