

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21724 of 2012

Saraswati Devi Wife Of Late Kanhaiya Singh Resident Of Village + P.O. - Naya Panapur, P.S. - Akilpur, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Energy, Government Of Bihar, Irrigation Building, Old Secretariat, Patna
3. The Engineer-In-Chief, Energy Department, Irrigation Building, Old Secretariat, Patna
4. The Chief Engineer, Energy Department, Irrigation Building, Old Secretariat, Patna
5. The Superintending Engineer (Electrical), Electrical Works Circle, South Bailey Road, Patna
6. The Executive Engineer, Electrical Works Division, South Bailey Road, Patna
7. The Assistant Engineer, Sub Divisional Office Patna Ii, South Bailey Road, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : M/S Bishnu Kant Dubey, Ranjeet Kumar and Sanjeev Kumar

For the Respondent/s : Dr. Anil Kumar Upadhaya(S.C. 20) & Mr. Naresh Pd.(A.C. to S.C.20)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 21-04-2015

The husband of the petitioner (for short employee) was initially engaged on daily wage basis with effect from 28-2-1983 in the Energy Department of the Government of Bihar, and he was treated as one on work charge establishment, with effect from 2-5-1988. It is claimed that the employee was taken in regular



establishment through order 17-8-1994. He died on 3-5-2012 while in service. The petitioner submitted a representation for sanction of family pension to her. Since no order was passed thereon, she filed the present writ petition. She contends that her husband worked for more than about 30 years in the Department in various capacities and that she is entitled to be paid his family pension and gratuity.

2. On behalf of the respondents a detailed counter-affidavit is filed. They denied the plea of the petitioner that the service of the employee was regularized. It is also pleaded that the person engaged under work charge establishment would be liable to be discontinued with the completion of the work, and there hardly exists any continuity or permanency of employment in such cases. Reliance is placed on certain provisions of the P.W.D. Code.

3. Learned counsel for the petitioner submits that though the pension is normally sanctioned to an employee appointed by the Government on substantive and permanent basis, as provided under Rule 58 of the Bihar Pension Rules, 1950, exception is carved out in Rule 59 which enables the Government to pay pension to an employee whose service is not regularized. He submits that way back in 1969 the Government has taken a decision to pay pension to such of the employees whose services were not regularized, but have put in 15 years of continuous service. He placed reliance on Memo No. Pen

1024/69/11779F dated 12-8-1969 issued by the Government in the P.W.D. Department through which the work charge establishment was equated to temporary service, in the Department.

4. Learned counsel for the respondents submits that the work charge establishment is a class by itself, and it cannot be equated with temporary employment, much less to a permanent employment. He submits that the occasion to extend the benefit of Rule 59 to an employee would arise, if only the employment was temporary in nature but the same was not regularized and in the present case such a situation does not exist . Both the learned counsel relied on certain precedents.

5. It was from the year 1983, that the employee served the Energy Department- may be on daily wages. It is not in dispute that his service was taken under work charge establishment with effect from 2-5-1988. Though it was submitted that his service was regularized from 2-5-1988 , we are not taking the same into account since there is serious dispute about it. Ultimately, he died on 3-5-2012. The undisputed facts reveal that the employee was functioning as work charge employee between 2-5-88 and 3-5-2012 i.e., for a period of 20 years

6. The question is as to whether the service rendered by the employee becomes pensionable. It is only when the service of her

husband becomes pensionable, that the petitioner will be entitled to family pension.

7. It is a matter of common knowledge that the pension is paid only when the post held by an individual is in the establishment of the Government and the employment is against a substantive post. Rule 58 of the Bihar Pension Rules, 1950 makes this aspect clear. However, an exception is carved out to this Rule, under Rule 59. It reads as under:

“59. The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions(1) and (2) are not fulfilled-

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.”

8. This is an almost an enabling provision. Therefore, much would depend upon the decision, which the Government may take in this behalf. Obviously, keeping in view Rule 59, the Government has taken decisions from time to time. The one taken through Memo No. Pen 1024/69/11779 F dated 12-8-1969 is as under:

“Regarding:- Declaration of

temporary service of a Government servant who is not confirmed as pensionable.

Under the existing pension rules, a temporary Government service if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under rule 59 of the Bihar Pension Rules.

2. There are a large number of temporary Government servants employed under different schemes which are in existence for the last 15-20 years and it will cause hardship to them, if they are not allowed pension after their retirement.

3. The State Government after careful consideration had, therefore, been pleased to decide that, if the service of the temporary or officiating Government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under rule 59 of the Bihar Pension Rules.”

9. From paragraph no.3 of the aforesaid Memo, it becomes clear that the Government has decided to extend the benefit of pension even to the employees whose services are not confirmed or regularized, provided they have continuous service of more than 15 years.

10. The contention of the learned counsel for the respondents



that the benefit under the Memo can be extended if only the service is temporary in nature, in contra distinction to the work charged establishment. Even if that approach is adopted, the decision taken by the Government in P.W.D. Department has significance. Through Memo no. 1344 dated 4-2-1949 the State Government has blurred the distinction between the work charged establishment temporary and permanent establishment. The Memo reads:

“Subject.- Revised conditions of service of work-charged establishment.

The existing distinction between work charged establishment temporary and permanent establishment and daily labour as given in the P.W.Code and P.W.D. Accounts Code will be maintained but the conditions of service of work- charged establishment will henceforth be identical with those of temporary Government servants.

The posts in work-charged establishment which are of permanent nature, that is required for 12 months in the year and for long and indefinite period will be made permanent and included in permanent establishment and the men employed on these posts, having one year's approved service will be included amongst permanent Government employees. Details in this connection are being worked out and till this is done the conditions of service applicable to temporary Government servants will apply to all work- charged posts.”



11. The decision contained in the aforesaid Memo of 1949 was not changed or altered at any subsequent point. If one takes into account the memo extracted above, it becomes clear that the work-charge employee deserves to be treated on par with a temporary employee, and once that is so, the benefits under Rule 59 of the Pension Rules, as implemented with the government decision contained in the Memo of 1969 , become applicable. The result would be that the service of the deceased employee was pensionable. As a consequence, the petitioner is entitled to family pension.

12. It is no doubt true that we have arrived at a conclusion through the process of interpretation. However, in a matter of this nature a semblance of liberal approach is warranted. Even while making effort to protect the limited resources of the State, the Court must endeavor to implement the scheme of pension which is social security measure; in its letter and spirit. One must not forget that the pension is not a charity by the government and it is the accumulated result of the service rendered by the employee over the years. We are fortified in our approach by the judgment of the Supreme Court in Harjinder Singh –v- Punjab State Warehousing Corporation [2010 (3) Supreme Court Cases 192].

13. After taking note of the judgments on the subject rendered over the past several decades, their Lordships observed in

para 46 as under :

“Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in Authorised Officer –v- Naganath Ayyar, while interpreting the Land Reforms Act, that beneficial construction has to be given to welfare legislation.”

The mandate under Article 38 of the Constitution was also taken note of.

14. For the above reasons, we allow the writ petition and direct the respondents to sanction and pay family pension and gratuity to the petitioner on account of the service rendered by her husband . Since the liability to pay is fixed upon the State Government for the first time and law was not clear on this aspect, we direct that payment of family pension and gratuity shall be prospective in nature with effect from 1st May, 2015. We deny all other reliefs except one family pension and gratuity.

A.F.R/

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

B.Roy/-Singh

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