

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15104 of 2013**

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1. Parvati Devi Wife Of Late Ram Pravesh Resident Of Village And P.O.- Bela,  
P.S.- Naubatpur, District- Patna

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Engineer In Chief, Water Resources Department, Govt. Of Bihar, Patna
4. The Chief Engineer, Water Resources Department, Dehri On Sone (Rohtas)
5. The Superintending Engineer, Water Resources Circle, Dehri On Sone (Rohtas)
6. The District Magistrate, Rohtas At Sasaram
7. The Executive Engineer, Sone Nahar Modernisation Division, Piro (Bhojpur)

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ambika Bhagat, Advocate

For the Respondent/s : Mr. Anil Kumar Upadhyay, SC 20,  
Mr. Naresh Prasad, AC to SC 20

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 29-03-2016**

Heard learned counsel for the petitioner and learned  
counsel for the State.

2. In the present writ petition, petitioner has prayed for two  
reliefs; one for regularisation in service and another for granting  
him pension and family pension.

3. It is an admitted fact that husband of the petitioner was  
never brought to the regular establishment. First relief cannot be  
granted to the petitioner in terms of the Bihar Pension Rules  
because one of the ingredient is that person must be holding



substantive post. But here fact is that the husband of the petitioner was never regularise, was not holding a substantive post. Second question is for regularisation in service to her demised husband.

4. It appears from the record that her husband has entered into service as Chaukidar vide letter no.885 dated 13.6.1974 under the Executive Engineer, Flood Control Division No.1, Ara. Right from beginning he was in work charge establishment but from the record it appears that he has remained absent willingly from time to time which is apparently clear from the details given in Office Order dated 30.6.1990. It also appears that petitioner was also put under suspension for remaining absent vide memo no.127 dated 16.1.1997 but that suspension order was withdrawn and so much so he was granted extraordinary leave for 681 days. It does not appear from the records of the case, any department proceeding was initiated. That suspension was withdrawn vide memo no.328 dated 12.2.2002. The husband of the petitioner has died on electric shock in 2011. It appears that the Chief Engineer vide letter dated 24.1.2003 had sent record of the husband of the petitioner for bringing him in regular establishment vide letter dated



24.1.2003, but it remained static in the meantime husband of the petitioner died. The present petitioner sent legal notice, replied by the Executive Engineer to her lawyer giving details of fact that his services was not satisfactory and as such there is no question of regularisation of service of husband of the petitioner. The Government from time to time has issued circular and executive instruction thereby taken policy decision to regularize, the service of an employee discharging the duty in work charge establishment.

5. Learned counsel for the State has put emphasis that in reply of the legal notice, the Executive Engineer vide letter no.503 dated 21.12.2012 communicated decision of refusal of regularize the service of her husband as his service was not satisfactory. It appears that Executive Engineer has given reply to the legal notice of the petitioner. It does appear that he has treated himself as opposite party and sent his reply. Reply of legal notice is quite different, so this Court feels, reply of legal notice cannot be treated to be an order. The State from time to time has taken policy decision by way of issuing circular from time to time. One of the circular has been brought by the State dated 22.10.1984 whereby fixed the cut-off dated 21.10.1984,



providing work charge employee who has discharged the duty satisfactorily for five years would be regularised in service and later on the cut off dated as on 21.10.1984 vide notification no. 639 dated 16.3.2006 was extended 11.12.1990.

6. In such view of the matter, this Court is of the view that let the case of the petitioner be considered by the Chief Engineer, Water Resoruces Department, Dehri-on-sone with regard to regularisation in service in terms of the circular issued by the State of Bihar from time to time.

7. While deciding the case of the petitioner the authority concerned will be obliged to examine the contour of the judgment in the case of Jai Kishun Ram and others v. The State of Bihar & others, reported in 2016(1) PLJR 512 where the Court has directed the conditions for regularisation in service. The Chief Engineer will also consider the judgment of State of Biahr v. Bimli Devi, reported in 2015(1) PLJR 482.

8. In such view of the matter, this Court directs to consider the case of the husband of the petitioner with respect to regularisation in view of circular issued by Government from time to time.

9. For convenience, this Court directs the petitioner to file a detailed representation to the Chief Engineer annexing a copy of

the present order and Chief Engineer will examine the matter and pass a reasoned order within a period of four months from the date of filing of the representation.

10. With the aforesaid observation this writ petition is disposed of.

**(Shivaji Pandey, J)**

Vinay/-

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