

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15912 of 2010

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Shyamanand Jha S/O Late Bulan Jha Vill Gonauli, P.S.-Andhratharhi, Distt-Madhubani

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Rural Development Department Government of Bihar, Patna
3. The Engineer-in-Chief-Rural Work Department, Government Of Bihar, Patna
4. The Superintending Engineer, Road Construction Division Darbhanga, Distt-Darbhanga
5. The Executive Engineer, Rural Works Department -Cum-Road Construction Department , Works Division Benipatti, Distt-Madhubani

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ratanakar Jha, Advocate

For the Respondent/s : Mr. S. K. Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-12-2016

The petitioner has made following prayers in para-1 of the present writ petition :-

“(i) For quashing the letter no. 764 dated 15.07.2010 to the extent, grant of pension, gratuity and leave salaries has been rejected by the respondents.

(ii) For commanding and directing the respondent to grant pension, gratuity and leave



salary to the petitioner from the date of his retirement.

(iii) For commanding and directing the respondents to ensure the arrears of pension from the date of his retirement with all consequential benefits.”

2. The contention of the petitioner is that he was working on daily wage basis on the post of Khalasi in Rural Engineering Organization, Works Division, Madhubani. Subsequently, he was taken in work charge establishment and on attaining the age of 60 years he retired on 31st July, 2008. Despite having filed several representations before the authorities, the respondents did not pay the retiral dues and, hence, he filed a writ petition before this Court vide CWJC No. 25881 of 2010 which was disposed of by a Bench of this Court vide order dated 16.02.2010 whereby it was directed that in case, the petitioner files representation before the authorities concerned, the respondents shall consider each claim raised by the petitioner in accordance with law and dispose of the same expeditiously preferably within a period of four months on receipt of such representation. Thereafter, the petitioner filed a fresh representation before respondent no. 5 and requested him to consider his claim for retiral dues. However, respondent no. 5 vide order as contained in letter no. 764 dated 15.07.2010 rejected the representation of the petitioner and held



that the petitioner, being not employed in regular establishment, was not entitled to the benefit of pension, gratuity and leave salary.

3. The contention of the petitioner is that since the petitioner was in work charge establishment, he is entitled for retiral dues and respondent no. 5 has illegally rejected the claim of the petitioner for payment of post retiral dues.

4. On the other hand, learned counsel for the State has contended that the person who has rendered his service on daily wage or in work charge establishment is not entitled to payment of retiral dues. He has further contended that only such a Government servant can qualify for pension whose employment is substantive and permanent. Since the service of the petitioner was never regularized in permanent establishment, he would not be entitled to receive family pension. He has also contended that the decision taken by the respondent no. 5 is in consonance with the judgment of a Division Bench of this Court passed in the matter of *the State of Bihar & Ors. vs. Bimli Devi*, since reported in *2016(1) PLJR 452*.

5. I have heard learned counsel for the parties and perused the record.

6. I find substance in the argument of learned counsel for the State.

7. Rule 58 of the Bihar Pension Rules, 1950



stipulates that 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.

8. Further, Rule 61 of the Bihar Pension Rules, 1950 stipulates that service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

9. It is an admitted position of the present case that the employment of the petitioner was never made under substantive and permanent establishment. The case of the petitioner is squarely covered by the judgment of the Division Bench in the matter of *the State of Bihar & Ors. vs. Bimli Devi* (supra)

10. Accordingly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	...
Uploading Date	20.12.2016
Transmission Date	

