

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23218 of 2013

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Narendra Prasad Singh S/O Late Baneshwar Singh Resident Of Village- Pacharah,
P.O- Asharhi, P.S- District- Nawada (Now Retired).

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Department Of Water Resources Government Of Bihar, Sinchai Bhawan, Patna
2. The Principal Secretary, Department Of Personnel And Administrative Reforms (Now General Administration) Government Of Bihar, Patna.
3. The Joint Secretary, Department Of Water Resources Government Of Bihar, Sinchai Bhawan, Patna.
4. The Under Secretary, Department Of Water Resources Government Of Bihar, Sinchai Bhawan, Patna.
5. The Engineer-In- Chief Water Resources Department, Government Of Bihar, Patna.
6. The Chief Engineer Department Of Water Resources, Katari, Jheel Road, Gaya, Bihar
7. The Superintending Engineer, Water Ways Circle, Nawada.
8. The Executive Engineer, Tilaiya Canal Division, Wazirganj, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukul Sinha, Adv.

For the Respondent/s : Mr. Dhurjati Kr Prasad, GP-14

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-12-2016

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

It is a very hard case for the petitioner as he has
approached this Court for the purpose of treating him in service on



regular basis from the date he has been discharging the duty i.e. since 1982. If the law is clear then equity cannot have a precedence over the law. It is the law which has to prevail over equity. Equity only comes when the law permits and, in the repugnant situation, this Court feels hard to grant relief. It is one of the case this Court has all sympathy for the petitioner but sympathy does not work always as it will not be sufficient to grant him relief.

The petitioner is challenging the action of the Department which without regularizing the petitioner in service has made him superannuated with effect from 31.1.2013. For deciding this case, it is relevant to record necessary facts for disposal of this case. In nutshell, the facts are that the petitioner and others were appointed as IVth grade employee in Tilaiya Canal Division, Wazirganj under the then Irrigation Department by the competent authority i.e. Superintending Engineer on daily wages in the year 1982 and continued to discharge the work as unskilled labour till the date of his superannuation. The Government issued Memo No. 3455 dated 10.4.1990 under the signature of Joint Secretary, Government of Bihar, thereby instructed all the Commissioners cum Secretaries of the Department to consider the regularization of the services of the daily wagers who have worked for more than 240 days in a year preceding five years from the cut off date. When nothing tangible was



done, the petitioner approached this Court in C.W.J.C. No. 6469 of 1998 for absorption in the regular cadre of the Irrigation Department and, for payment of wages equal to that of the permanent employee of the department on the doctrine of equal pay for equal work. The case was heard and disposed of on 12.10.1999 giving direction to consider the case of the petitioners for regularization in the services within six months in the following terms:-

"The petitioners will file their individual representation before the said authority, who will communicate the decision in terms with the aforesaid direction within a period of six months from the date of receipt of such representation.

Till the regular appointment is not provided with the petitioners, the authorities will pay the petitioners the wages at the lowest stage of time scale of pay as admissible to class-IV post alongwith the admissible allowance of which duties are being performed by one or other petitioner. Such benefit is to be given for the period from October, 1999 onwards, till the regular appointment is being made."

After that order, the petitioners started getting minimum pay-scale, they continued but, their services were not regularized. On later stage, the Government withdrew the benefit of minimum pay-scale by a general order vide memo no. 1991 dated 31.8.2004 which compelled the petitioner and others to approach this Court in C.W.J.C. No. 43 of 2005 with a prayer for regularization along with other writ application C.W.J.C. No. 11820 of 2004 and this Court vide order



dated 21.2.2005 quashed the notification dated 31.8.2004, whereby, the Government directed minimum pay-scale and, thereafter, the Government resumed to pay the minimum pay-scale to the petitioner and others. Even though they were getting the minimum pay-scale but without regularization of service which was not conferred to them and, thus, large number of persons approached this Court including petitioner in C.W.J.C. No. 6504 of 2000 and this Court disposed of the case vide order dated 30.11.2006. The Court, in view of the judgment passed by the Constitutional Bench of Hon'ble Apex Court in the case of *Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors.* reported in (2006) 4 SCC 1, had directed the Chief Secretary of the Government of Bihar to constitute a committee of three Secretaries within a period of two months to examine the manner, mode and the type of appointment and whether such appointments are in consonance with the Recruitment Rules on regular posts, irregularly made or illegally made or not and other directions were given. It is relevant to quote the directions of this Court passed in C.W.J.C. No. 6504 of 2000 which reads as follows:-

- (1) *The Chief Secretary, Government of Bihar shall constitute a Committee of three Secretaries within a period of two months from today to examine the manner and mode and the type of appointment and whether such appointment are in consonance with the Recruitment Rules on regular basis, irregularly made*



or illegally made or not.

- (2) *Such Committee shall consider the individual case after giving an opportunity of hearing to the affected employee, the procedure for which the Committee will evolve its own modality and modus operandi so as to reach to a conclusion as to the nature of the appointments of the employee covered in this group of petitions and to ascertain whether their appointments are regular, irregular or illegal and whether they are falling within the ambit of the observations made in paragraphs 45 and 53 of the decision in Secretary, State of Karnataka and others Vs. Uma Devi (3) (supra) case judgment.*
- (3) *The Committee shall, undoubtedly, take a decision in the light of the law laid down by the Constitution Bench of the Hon'ble Apex Court in Secretary, State of Karnataka (supra) and in particular in the light of the observations which are quoted herein above.*
- (4) *It shall, also, be remembered that the exercise of regularization, if required, shall be a one time measure.*
- (5) *The exercise by the Committee is directed to be completed within six weeks after the creation thereof and in the event of any necessity it will be open for the concerned party to seek extension of time by taking leave from this Court.*
- (6) *The contention that in some of the cases out of the present group in earlier round of litigation finality has been attained and achieved shall, also, be examined by the Committee.*
- (7) *Until the Committee concludes its process and exercise directed herein above, the status quo in respect of the petitioners obtainable as on today, is directed to be maintained."*



Though the petitioner and others were working there since 1982 but, under the wrong consideration, the claim of the petitioner was rejected and, in pursuance thereof, vide Memo No. 675 dated 29.4.2009, the Executive Engineer was directed to remove the petitioner along with other similarly situated persons. The order of the Three Men Committee including the order of removal forced the petitioner and others to approach this Court in C.W.J.C. No. 7144 of 2009 and, this Court, vide order dated 30.6.2009, stayed the order of termination dated 29.4.2009, which was issued in pursuance of the order passed by Three Men Committee and, ultimately, the Court constituted One Man Committee of Justice Uday Sinha to look into the matter from different angle and the Court in paragraph no.13 has recorded that till the matter is finalized by the Committee, the employees, who were continuing in service, shall continue but, the present continuance would not entitle them to claim any kind of equity in their favour. In the order dated 20.7.2011, Hon'ble Mr. Justice Uday Sinha has recorded that this application is disposed of with a direction to the Chief Engineer, Tilaiya Canal Divisions to fill up the vacant regular posts in a regular manner within six months, giving preference to employee working on daily wages. In pursuance thereof, the petitioner has placed all his records for consideration and the Chief Engineer, vide memo no. 2059 dated 17.12.2013,



regularized the services of number of persons from the date of issuance of letter but, unfortunately the petitioner could not have been regularized as he by that time superannuated from service. The issue of regularization in service was considered by Committee, presided over by District Magistrate cum Chairman, recommended the regularization of 27 persons and refused to grant benefit of regularization to five persons including the petitioner as all of them have crossed the age of sixty years. So in nutshell, the persons, who have been superannuated on the date of passing the order, were not given benefit of regularization.

Now a question has been raised by the learned counsel for the petitioner for regularization but the State has raised a question that an employee who had already superannuated from service can not claim his regularization in service and that too the Court would not pass an order of regularization from the retrospective date. He has further submitted that the question of grant of pension and family pension does not arise in view of the fact that he was all through remained as a daily wage employee, never attained the status of temporary employee and, as such, the petitioner cannot claim any benefit of pension and, in support of his submission, the State has placed reliance in the case of *Shreeniwas Poddar Vs. The State of Bihar & Ors.* reported in 2013 (4) PLJR 762, in the case of *Shreeniwas Poddar Vs.*



The State of Bihar & Ors. reported in 2016(2) PLJR 344 and in the case of *The State of Bihar & Anr. Vs. Bhagwan Singh (since dead)* reported in 2014(4) PLJR 229.

Per contra, the petitioner has submitted that he will be entitled to the pension treating his date of appointment is from 1982 and, in support of his submission, he has placed reliance on the judgment in the case of *D.S. Nakara & Ors. Vs. Union of India* reported in (1983) 1 SCC 305 which cannot be applied on the facts of this case. In that case, employees were getting pensionary benefit, when the revision pension came, the benefit was granted to certain section of pensioners and certain were kept out, certain section which could not get benefit raised grievance claiming that there cannot be a class in the class itself and it has been held by the Hon'ble Apex Court that the pensioner constitute one class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension and held that fixation of cut-off date is arbitrary, violative of Article 14 of the Constitution of India. Here this judgment does not apply as there is no sub-classification in the class but, here is the question as to whether the petitioner is entitled to benefit of pension from the date of his entry in service as daily wager. He has further placed reliance on the two judgments in the case of *A.P. Srivastava Vs. Union of India & Ors.*



reported in *1995(6) SCC 227* and in the case of *Yashwant Hari Katakhar Vs. Union of India & Ors.* reported in *(1996) 7 SCC 113*. He has also placed reliance on the judgment of Madras High Court in W.P. No. 15258 and 15468/2006. It will be relevant to deal with the Madras judgment. In that case the petitioner was working as Office Assistant on temporary basis. He filed several representations for regularization which was finally rejected having held that the petitioner does not possesses the required qualification and the petitioner attained the age of superannuation and there service could not be regularized which was challenged before the High Court and there a plea was taken that he could not have been regularized on attaining the age of superannuation. Second relief was sought for grant of pension under the pensionary scheme which was resisted taking a plea that only the permanent employee will be entitled to the retiral benefit even though the petitioner has discharged the duty for thirty years. In paragraph no.9 of the said judgment, the Court has recorded that as per Rule 21 of the Tamil Nadu Pension Rules, 1978, if a person who was discharging the duty on temporary basis was also entitled for pensionary benefit but, in our State, such type of rule is not available rather Rule 58 of the Bihar Pension Rules stipulates the person who is claiming for pension must qualify three conditions, firstly, the service must be under the Government, secondly, the employee must be



holding substantive and permanent post and third the salary must be paid by the Government. All the three aforesaid conditions are sine qua non for coverage under Bihar Pension Rules and if a person does not fulfill all the three conditions, he will not be entitled to the pension under the Bihar Pension Rule. The qualifying period has been given as 10 years and 20 years has been made for entitlement of full pension. In the present case, first and third conditions are satisfied but the condition no.2 is not satisfied by the petitioner as admittedly, he although remained on a temporary basis, never was brought to substantive post and his service was not made permanent and, thus, the petitioner does not fulfill all the three conditions.

Basically in the present case, the prayer for regularization in service. The petitioner has also argued for the pensionary benefit and, that is why, this Court has traveled beyond the limit only to satisfy the petitioner that the pensionary benefit can be given to those persons only who satisfy all the aforesaid three conditions but, it will be the duty of the Court to consider the cases cited by the petitioner. In the case of A.P. Srivastava (supra), the Hon'ble Supreme Court has directed for payment of pension as the person had rendered 20 years of service but the fact of that case is quite different as the petitioner of that case had joined the service of the Government of India on temporary basis on the post of Lower



Division Clerk in the Industrial Organization on 6.10.1955, promoted to the Upper Division Clerk on probation on 28.12.1962 and continued for eight years, he was again reverted to the post of temporary Lower Division Clerk on 1.12.1970. Pending initiation of departmental proceeding, he was suspended in the year 1.12.1980, the departmental proceeding was initiated on 10.4.1981, the Disciplinary Authority passed order of punishment on 1.6.1985, against the order of punishment, appeal was filed which was forwarded to the appellate authority, the appeal was disposed of, approached to the Central Administrative Tribunal, while the matter was pending, the authority issued the order of premature retirement under Rule 56(j)(ii) of the Fundamental Rule making it effective on 1.3.1988. In that context, the Hon'ble Apex Court has given direction that as he has discharged the duty for 20 years, he should be given the benefit of pension but, it is not a case of daily wage employee rather it was a case of temporary employee and so much so that he was althrough considered an employee and, on that ground, the person was compulsory retired under Rule 56(j)(ii) of the Fundamental Rule. So the fact of that case is completely different to the present. So the judgment cited by the petitioner cannot be made applicable in the present case. Similar type of judgment is also cited by the petitioner in the case of Yashwant Hari Katakkar (supra), there also, the person was working on quasi



permanent service, worked for 18.5 years, he was deprived of the pension. The Hon'ble Apex Court is of the view that as he was holding quasi permanent post, minimum period of service for pension was/is for 10 years, he has completed 18.5 years then he should have been given the pension. Thus, this judgment is also not applicable to the present case. Now this is the position with regard to entitlement of pension. This Court is also fortified from the above view from the judgment of Full Bench of this Court in the case of Bhagwan Singh (supra) wherein this Court has held that the period as daily wage cannot be taken into consideration for regularization in service, the period of Work Charge Establishment was taken into consideration as pensionable service. It will be relevant to quote paragraph no.14 of the aforesaid judgment which reads as follows:-

"14. Keeping in view the above provisions, we are of the opinion that the service rendered by the petitioner as daily wage Choukidar under the Executive Engineer, Tubewell Division, Gaya cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. Such service, although was followed by absorption on regular establishment, will not qualify for pension. Therefore, the service rendered by the petitioner, as daily wage employee from April 1973 to December 1978, was not a pensionable service or did not qualify for pension. On his retirement from service or his superannuation from service, he would be



entitled to pension for the service rendered on a substantive post from 1st January 1979 till the date he retired from service."

The question in the present case is that whether regularization can be given with retrospective effect after retirement. When the person has superannuated from service, the relationship of master and servant is over. Only the relationship exists for the purpose under the Bihar Pension Rule and not for any other purpose. When already the person has superannuated, the question of regularization does not arise as he is not in service, service can only be regularized when the person is within the prescribed limit of age of superannuation. This view is also supported from the judgment of this Court in the case of Shreeniwas Poddar (supra). There the Court has also held that no order of retrospective regularization can be passed. Regularization in service is prospective action and same view has also been reiterated in the recent judgment in the case of ***Mahesh Kumar & Ors. Vs. The Union of India & Ors.*** reported in 2016(2) PLJR 334, there also the Court has held that on attaining the age of superannuation, there cannot be a direction for regularization in service. Thus, in view of the aforesaid view taken by this Court, it is not possible for this Court to pass an order in favour of the petitioner to grant him regularization from the date of his entry in service in the year 1982. If he has remained as a daily wager, the consequence is that he will not be



governed under the Bihar Pension Rule.

With the aforementioned observation, this application is
dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	9.12.2016
Transmission Date	

