

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5263 of 2014

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Most. Rupa Devi, wife of late Nepali Ray, residence of Village-Paithani Nathupur,
P.S.- Phulwarisarif, District-Patna

.... Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Public Health Engineering Department, Bihar Patna
2. The Engineer-in-Chief, Public Health Engineering Department, Bihar, Patna
3. The Joint Secretary, Public Health Engineering Department, Bihar Patna
4. The Chief Engineer, Public Health Engineering Department, Bihar Patna
5. The Superintending Engineer, Public Health Engineering Department, Patna Range, Patna
6. The Executive Engineer, Public Engineering Department, Patna East Circle, Patna
7. The Junior Engineer, Public Health Engineering Department, Fatuha Sub-Circle University Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sheel Bhadra Jha, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7
Mr. Ranjan Kumar, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-12-2016

The petitioner has filed writ application for directing the respondents to treat service of the petitioner's husband as permanent with effect from 01.01.1988 and further to fix family pension of the petitioner in accordance with law and to provide entire consequential benefit.

2. It is contended by the learned counsel for the petitioner that the petitioner is wife of one Nepali Ray, who died on 18.11.2005. Late Nepali Ray was initially appointed as Khalasi



under Master Roll on 1st April, 1982 under the office of Junior Engineer, Public Health Engineering Department, Fatuha Sub-division, Agam Kuan, Patna. Subsequently, he had been appointed by the Selection Committee under Work Charge Establishment on 20.12.1988 on the post of Nalkup Khalasi, but, all of a sudden, the Commissioner-cum-Secretary, Public Health Engineering Department, Bihar, Patna reverted his service from Work Charge Establishment to Khalasi under Muster Roll vide order dated 13th April, 2002. After joining on the post of Khalasi under Muster Roll, he died on 18.11.2005.

3. It is submitted that reversion of service of the petitioner from the Work Charge Establishment to Khalasi under Muster Roll was wholly illegal and arbitrary, as a result of which, the petitioner is not being paid family pension or other post-retiral benefits.

4. In reply, learned counsel for the State has submitted that the deceased Nepali Ray never challenged the order of reversion from Work Charge Establishment to Khalasi under Muster Roll during his lifetime. He worked on the post of Khalasi in Muster Roll for about three years before his death on 18th November, 2005. It is contended that even in the present writ application the order passed by the Commissioner-cum-Secretary,



Public Health Engineering Department, Bihar, Patna, whereby the deceased husband of the petitioner was reverted from Work Charge Establishment to Muster Roll has not been challenged and, in that view of the matter, no pensionary benefit can be granted to the petitioner.

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

6. I find substance in the argument of the learned counsel for the State. There is nothing on record to suggest that the husband of the petitioner had ever raised any objection to his reversion from Work Charge Establishment to Muster Roll during his life time. Even in the present writ petition, the order dated 13th April, 2002 passed by the Commissioner-cum-Secretary, Public Health Engineering Department, Bihar, Patna whereby, the husband of the petitioner was reverted has not been challenged.

7. In that view of the matter, the status of the deceased Nepali Ray was that of a Muster Roll employee on the date of his death.

8. It is well settled that service rendered by a person as daily wage or under Muster Roll cannot be said to be a service rendered on a substantive post in permanent establishment. Rule 58 of the Bihar Pension Rules (For short 'Rules') provides that the



service of a Government servant does not qualify for pension unless it conforms to the following three conditions:- (i) The service must be under Government; (ii) The employment must be substantive and permanent; and, (iii) The service must be paid by Government. Rule 61 of the Rules provides that, 'service does not qualify unless the Government servant holds substantively a post on a permanent establishment'. Rule 45 of the Rules expressly excludes certain service for computation of pension. Clause (a) thereof reads, 'when a government servant is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged. Clause (b) thereof reads, 'when a person is employed temporarily on monthly wages without specified limit of time or duty'.

9. In view of the aforesaid statutory provisions of law, no relief can be granted to the petitioner. Accordingly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2016
Transmission Date	NA

