IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1267 of 2013

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Manish Kumar Upadhyay Son of Sugandh Upadhyay Resident of West Lakshmi Nagar (Khemani Chak), P.S. - Ram Krishna Nagar, District – Patna. .... Petitioner/s

Versus

1. The Bihar School Examination Board, through its Chairman, Sinha Library Road Patna – 17.
2. The Secretary, Bihar School Examination Board, Sinha Library Road Patna – 17.
3. The Deputy Secretary, Bihar School Examination Board, Sinha Library Road, Patna – 17. .... Respondent/s

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Appearance :
For the Petitioner/s: Mr. Prashant Ranjan Singh, Adv.
For the Respondent/s: Mr. Sunil Kumar Mandal, Adv.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

10. 05.05.2016 The petitioner has filed this writ petition for direction to the respondents to calculate his pensionary benefit by taking into account the period from March, 1969 to January, 1981 where he worked on daily wage basis in the Bihar School Examination Board.

Learned counsel for the petitioner submits that even though other employees were confirmed in a shorter period the petitioner's service was confirmed only in the year 1981. He submits that as his service was made permanent, the period of temporary service from 1969 to 1981 be calculated for calculation of pensionary benefit.

The Petitioner in this respect refers to Rule 61 which is quoted hereinbelow for easy reference:-

> *"61 Service does not qualify unless the Government servant holds substantively a post on a permanent*

establishment.

State Government decisions:-

**Regarding:- Temporary Service counting for Pension.*

It has now been decided that temporary service or officiating service under the State Government when followed by permanency whether in the same or any other post should count in full for pension except in respect of-

(i) period of temporary service in non-pension establishment, and

(ii) period of service paid from contingencies.

(iii) The concession of counting officiating and temporary service in full for pension will be available to Government servants who are governed by the Old Pension Rules, or the Liberalised Pension Rules."

In support of the submission that he had worked on daily wage basis before 1981, the memo of the Board, dated 22.01.1981 has been annexed as Annexure-1. As per Rule 61, the employer i.e. the respondents would be liable to count the service period spent on temporary basis if the employee is subsequently confirmed or made permanent in the organization. It is not in dispute that the petitioner has worked as a permanent employee of the Bihar School Examination Board. The petitioner has annexed some more documents to show that he had worked on daily wage in the organization before being confirmed.

In this view of the matter, the application is disposed of with a direction to the Chairman, Bihar School Examination Board, Patna to take a final decision with respect to the service period that would be counted for calculating total length of service in the light of Rule 61 of the Bihar Pension Rules.

It is expected that such decision would be taken within a period of two months from the date of receipt of this order.

Let this order be communicated to the Respondent No. 2 i.e. the Secretary, Bihar School Examination Board, Patna.

(Samarendra Pratap Singh, J.)

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