

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6103 of 2012

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Ram Bilas Prasad Singh son of Kamdeo Singh, Resident of Village and Post Office
Maldah, P.S.- Barbigha, District - Sheikhpura

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna
4. The Deputy Secretary, Finance (Pay Fixation) Department, Government of
Bihar, Patna
5. The Director, Primary Education, New Secretariat, Patna
6. The District Magistrate, Sheikhpura
7. The Deputy Development Commissioner-Cum-Chairman, District Education
Establishment Committee, Sheikhpura
8. The District Education Officer, Sheikhpura
9. The District Superintendent of Education-Establishment, Sheikhpura
10. The District Education Officer, Munger
11. The District Superintendent of Education-Establishment, Munger
12. The District Treasury Officer, Sheikhpura
13. The District Accounts Officer, Sheikhpura
14. The Head Master-cum-Drawing and Disbursing Officer of Govt. Middle
School, Kari-Anchal, Sheikhpura, District-Sheikhpura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar, Advocate

For the Respondent/s : Mr. Rajiv Roy, G.P.-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-11-2016

This petition under Article 226 of the Constitution has been

filed by a retired Assistant Teacher of a Middle School challenging

the order passed by the District Superintendent of Education,

Sheikhpura, vide memo no.777 dated 30th August, 2010 as contained

in annexure-6 to the present application whereby the respondent no.9

has rejected the prayer of the petitioner to count the period

commencing from 16th October, 1973 to 31st March, 1975 during

which he worked on monthly stipend as Matric Trained Science Teacher under Special Employment Scheme purely on temporary basis for the purpose of revision of pay scale, time bound promotion and revision of pension.

2. The petitioner was initially appointed as an Assistant Teacher in a Middle School, vide order as contained bearing memo no.2152(iii), Munger dated 3rd October, 1973 issued under the signature of the District Superintendent of Education, Munger. The said appointment was made on a monthly stipend of Rs.150/- purely on temporary basis under the 5th Five Year Plan. The petitioner submitted his joining pursuant to the said employment on 16th October, 1973 in Uchch Prathmik Vidyalaya, Kaithwan, Circle - Kaithwan, District - Munger. Subsequently, with effect from 1st April, 1975 pursuant to a decision taken by the State Government, the petitioner and other similarly situated teachers were adjusted as Matric Trained Assistant Teacher in regular scale.

3. After attaining the age of superannuation, the petitioner retired from service with effect from 31st January, 2008 when he was discharging his duty at Middle School, Kare, Sheikhpura. Munger.

4. The grievance of the petitioner is that the period during which he worked on a monthly stipend has not been counted as the period spent in regular service for payment of pay of the Matric

Trained Assistant Teacher as also for promotional benefit and the revision of pay etc.

5. Being aggrieved, the petitioner filed a writ petition before this Court, vide CWJC No.14511 of 2009, which was disposed of by this Court, vide order dated 4th February, 2010 with direction to the respondent-District Superintendent of Education to examine the representation of the petitioner and dispose of the same within six weeks. The respondent was directed to examine whether it was not essential to allow the petitioner the reliefs in the light of the order passed in CWJC No.3633 of 1994.

6. Pursuant to the aforesaid order dated 4th February, 2010, the petitioner represented his claim by filing a representation. On delay in disposal of his representation, he filed a contempt petition, vide MJC No.2964 of 2010.

7. During pendency of the contempt petition, the claim made by the petitioner was rejected by the respondent no.11, vide impugned order dated 30th August, 2010.

8. Thereafter, taking into consideration the aforesaid order passed by the respondent no.11, vide order dated 27th September, 2011, the contempt petition was disposed of by this Court giving liberty to the petitioner to challenge the order passed by the respondent-authority.

9. In the light of the liberty granted to the petitioner, this writ petition has been filed by the petitioner challenging the impugned order dated 30th August, 2010.

10. It is contended by Mr. Pankaj Kumar, learned counsel for the petitioner that the petitioner was initially appointed as an Assistant Teacher on monthly stipend, vide order dated 3rd October, 1973 pursuant to which he submitted his joining in the Middle School on 16th October, 1973 and since then he continued to work as such till 31st March, 1975 and under a policy decision of the government, the service of all such Assistant Teachers, who were working on monthly stipend was taken in regular establishment with effect from 1st April, 1975 in Matric Trained scale.

11. It is contended that the respondents have not paid him the pay in Matric Trained scale since the date of his initial appointment i.e., 16th October, 1973. It is further contended that the period of stipend has illegally not been counted for giving him other benefits such as time bound promotion etc. and even the period during which he has worked on stipend has not been counted for promotional benefit and revision of pay etc.

12. In support of his argument learned counsel for the petitioner has placed reliance on a decision of this Court in the matter of *Yogendra Raut vs. State of Bihar and Others* (CWJC No.3633 of

1994), as contained in annexure-3 to the present application.

13. Per contra, Mr. Rajeev Roy, learned Government Pleader No.5, appearing on behalf of the State has submitted that the petitioner was initially appointed under the 'Special Employment Scheme' on stipend basis which was purely temporary in nature. The petitioner and other similarly situated Assistant Teachers were adjusted in Matric Trained scale with effect from 1.4.1975 following the decision taken by the State Government. The said 'Special Employment Scheme' was a Central Government Scheme with the aid of United Nations International Childrens' Emergency Fund (for short 'UNICEF') for the purpose of teaching in the Primary and the Middle School. According to him, the entire expenses of the said scheme was to be borne by the Central Government and the payments too were made from the grant-in-aid provided by it under the budget head '*Rajkiya Prathamik Vidyalaya Kendra Chalit Karyakram*'.

14. Mr. Rajeev Roy has further submitted that the service of the petitioner rendered under the 'Special Employment Scheme' of the Central Government was not in a permanent establishment and, as such, the claim put forward by the petitioner for counting of his service rendered in a scheme on stipend basis for benefits like seniority, time bound promotion, revision of pay and computation of pension is unjust. He has also contended that the claim of the

petitioner is stale one, as he never raised any objection in respect of the reliefs claimed by him while he was in service. Even the earlier, writ petition was filed by him after four years of his retirement from service.

15. I have carefully heard learned counsel appearing on behalf of the parties and perused the materials on record.

16. Indisputably, the petitioner was initially appointed on a monthly stipend of Rs.150/- from the date of his joining on a purely temporary basis under the 'Special Employment Scheme'. His appointment was not against any substantive post of permanent establishment. It is also not controverted by the petitioner that the 'Special Employment Scheme' was a Central Government scheme for the purpose of teachings in the Primary and the Middle School with aid of the UNICEF and the entire expenses of the said scheme was to be borne by the Central Government and the payments were made from the grant-in-aid provided by it under the '*Rajkiya Prathamik Vidyalaya Kendra Chalit Karyakram*'.

17. In order to appreciate the arguments advanced on behalf of the parties, it would be appropriate to extract Rule 45, 56, 58 and 61 of the ***Bihar Pension Rules, 1950*** (for short 'the Rules') herein below:-

"45. In the following cases no claim to pension is admitted.-

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- (a) 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.
- (b) When a person is employed temporarily on monthly wages without specified limit of time or duty.
- (c) When a person's whole time is not retained for public service, but he is merely paid for work done, such as Government Pleaders and Law Officers not debarred from private practice.
- (d) When a public servant holds some other pensionable office, he earns no pension in respect of an office of the kind mentioned in clause (c) or in respect of duties paid for by a compensation allowance.
- (e) When a Government servant serves under an agreement which contains no stipulation regarding pension, unless the Provincial Government specially authorize him to count service towards pension."

Note.- The agreement should be so worded as to preserve inviolate the indefeasible right of the Provincial Government to modify the rules from time to time at their discretion, so that no claim may arise to the benefits of rules as they stood at the date when the agreement was executed.

56. Unless it be otherwise provided by special rule or contract, the service of every Government servant qualifies from the date on which he takes charge of the post to which he is first appointed.

[Comments.- A Govt. servant is entitled to a pension from the date from which he takes charge of the post on which he is first appointed.]

58. 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.

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



18. From a perusal of the aforesaid Rules, it would be evident that the Rule 56 of the Rules stipulates that ‘unless it be otherwise provided by special rule or contract, the service of every Government servant qualifies from the date he takes the charge of the post to which he is first appointed’. Rule 58 of the Rules stipulates three conditions and unless these three conditions are fulfilled the service of a Government servant does not qualify for pension. Further, Rule 61 provides that service does not qualify unless the Government servant holds a post on a permanent establishment. Rule 45 of the Rules expressly excludes certain service for computation of pension. Clause (a) of Rule 45 of the Rules 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 basis without specified limit of time or duty’.

19. In an identical case in the matter of *State of Bihar and another vs. Bhagwan Singh*, since reported in **2014(4)229**, a Full Bench of this Court taking note of the Rules 45, 56, 58 and 61 held as under:-

“13. It is apparent that the above referred provisions were not brought to the notice of the learned Single Judge or before the Division Bench in the matter of State of Bihar & Ors. vs. Chandrika Rai & Ors. (Letters Patent Appeal No.1343 of 1998).

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.

15. *It is not in dispute that the petitioner has indeed been paid pension for the service rendered by him from 1st January, 1979 till July, 2002 in the Work Charge Establishment, the petitioner is, therefore, not entitled to the relief claimed in the writ petition.*

16. *For the aforesaid reasons, Appeal is allowed. Impugned order dated 10th February 2010 made by the learned Single Judge in C.W.J.C. No.7228 of 2005 is set aside. C.W.J.C. No.7228 of 2005 is dismissed.*

17. *The judgment in the matter of **Chandrika Rai** (supra) and any other judgment taking a similar view are expressly overruled.”*

20. The case of the petitioner is squarely covered by the ratio laid down by the Full Bench of this Court in **State of Bihar & Anr. vs. Bhagwan Singh** (supra). The petitioner was initially appointed under a ‘Special Employment Scheme’ on stipend basis which was purely temporary in nature. He was also not in a permanent establishment of a substantive post and the payments were made from grant-in-aid. Therefore, the service rendered by the

petitioner on stipend basis from October, 1973 to 31st March, 1975 would not qualify for pension only on the ground that he was subsequently adjusted by the State Government on the post of Assistant Teacher in Matric Trained scale with effect from 1st April, 1975. It is indeed not in dispute that the petitioner has been given all the benefits during his service period and has been paid his pension for the service rendered by him in regular establishment. It would also be pertinent to note here that the Full Bench in *State of Bihar vs. Bhagwan Singh* (supra) has expressly overruled all other judgments which had taken a contrary view in such matter. Hence, the decision in the matter of *Yogendra Raut* (Supra) relied upon by the petitioner in support of his claim is of no help to the petitioner as the ratio laid down in that case stands overruled by a Full Bench of this Court.

21. I also find substance in the argument made on behalf of the State that the claim of the petitioner is stale one.

22. In the result, the petition, being devoid of any merit, is dismissed.

Md.S./-

(Ashwani Kumar Singh, J)

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