

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.528 of 2015

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Girja Nandan Sharma son of Late Suresh Sharma, resident of village - Pahleja,
P.O.- Jaipur, P.S.- Mehandia, District - Arwal

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Water Resources Department, Bihar, Patna
2. The Secretary, Water Resources Department, Bihar, Patna
3. The Chief Engineer, Water Resources Department, Valmikinagar
4. The Superintending Engineer, Triveni Canal Circle, Valmikinagar
5. The Executive Engineer, Triveni Canal Construction Division, Narkatiaganj
6. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the State : Mr. Ramadhar Singh, G.P.-25
For the Accountant General : Mr. Uday Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-11-2016

The present writ petition has been filed by the petitioner for directing the respondents to grant him pensionary benefits under the old pension scheme as provided under the Bihar Pension Rules taking into account the regular service rendered by him since 26.04.1979 on daily wages scheme or at least since 01.01.1999 from the date he was allowed minimum pay scale of Class IV post in compliance of the order dated 12.01.1999 passed in C.W.J.C. No.4909 of 1996.

2. In brief the case of the petitioner is that he was engaged as daily wage employee on 26.04.1979 by the Executive Engineer, Punpun Flood Protection Division, Patna City and was posted in



Punpun Flood Protection Sub Division, Fatuha. He was transferred to Punpun Flood Protection Sub Division No.2, Patna City by the order of the Executive Engineer, Punpun Flood Protection Division, Patna City on 18th July, 1981. He was working as a daily wage employee regularly since 26.04.1979. Since the respondents did not consider the representation of the petitioner and took no step for regularization of his service, he along with similarly situated employees moved before this Court by filing a writ petition praying for regularization /absorption against Class IV post and payment of salary at least at the minimum scale of pay prescribed by the State Government for such posts. The said writ petition was disposed of vide order dated 12.01.1999 directing the State Government to pay the petitioner salary at the lowest stage of pay admissible to Class IV post with effect from 01.01.1999. By the said order, it was also kept open for the State and other respondents to disengage the petitioner in the event his service is no longer required. Thereafter, the petitioner and some other daily wage employees were granted minimum scale of pay admissible to Class IV post with effect from 01.01.1999, vide order dated 13.05.1999 passed by the Chief Engineer, Water Resources Department, Patna. Subsequently, the State Government took a policy decision vide resolution dated 16th March, 2006 issued by the Personnel and Administrative Reforms Department to regularize the



services of such daily wage employee who were appointed prior to 11.12.1990 and worked continuously for at least 240 days. In the light of the aforesaid resolution, the petitioner was absorbed against the post of peon in Triveni Canal Construction Division, Narkatiaganj by order dated 12.09.1999 passed by the Chief Engineer, Water Resources Department, Balmikinagar. Thereafter, the petitioner submitted his joining before the Executive Engineer, Triveni Canal Construction Division, Narkatiaganj on 19th September, 2009. On attaining the age of superannuation, he retired from service on 30th November, 2013. After his retirement from service, history of the petitioner was sent to the Accountant General, Bihar, Patna for fixation of pension, but the Accountant General, Bihar, Patna rejected the claim of the petitioner for pension contending that his total tenure of regular service is only four years two months and twelve days from the date of absorption in regular service, i.e., 19.09.2009 whereas the minimum tenure for grant of pension is ten years as per the Finance Department Resolution No.3014 dated 01.07.1980.

3. It has been contended by the learned counsel for the petitioner that since continuance of service of the petitioner with effect from 26.04.1979 till the date of his retirement was not interfered with, he is entitled to pensionary benefits under the old pension scheme even though his absorption in regular service was



done by the respondents belatedly in the year, 2009. He has contended that on account of laches and lapses on the part of the respondents in regularizing the service of the petitioner from before, the petitioner cannot be deprived of his right to pension under the old scheme.

4. Per contra, learned counsel for the State has contended that prior to absorption in regular service status of the petitioner was of a daily wage employee. He was getting the scale of pay admissible to Class IV employee pursuant to the order passed by this Court in C.W.J.C. No.4909 of 1996 and analogous cases. He has contended that by the said order, this Court did not direct the respondents to absorb the petitioner in regular service rather the court had given liberty to the State Government to disengage the petitioner in the event his service was not required. It has been submitted that new pension scheme came into force with effect from 01.09.2005 whereas the petitioner was taken in regular service with effect from 12.09.2009 and he retired on attaining the age of superannuation on 30th November 2013. Since his absorption under regular establishment was made after 01.09.2005 on which date new pension scheme (Contributory Pension Scheme) had come into force and, thus, the petitioner cannot be allowed the pensionary benefits under the old scheme.

5. I have heard respective counsel for the parties and



perused the record.

6. The facts of the case stand admitted. It is indeed not in dispute that prior to the absorption against a regular Class IV post on 12.09.2009 the petitioner was working on daily wage though he was granted minimum scale of Class IV post under the order of the court. The service rendered by the petitioner prior to 12.09.2009 cannot be said to be a service under permanent establishment against a substantive post. The service rendered by the petitioner on daily wage would not qualify for pension in view of Rule 58 of the Bihar Pension Rules, 1950 (For short 'Rules') which reads as under:-

“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.”*

7. It would be evident from the second condition of Rule 58 of the Rules that unless the employment is substantive and permanent, the service of an employee would not qualify for pension. A similar issue was considered by a Full Bench of this Court in the case of the *State of Bihar & Anr. vs. Bhagwan Singh (since dead)* reported in *2014(4) PLJR 229* wherein after considering the



provisions prescribed under Rules 45, 56, 58 and 61 of the Rules, the Bench held in paragraph 14 as under:-

“14. Keeping in view of 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.”

8. Further, in paragraph 17 of the judgment, the Bench overruled all other judgments which had taken a contrary view in the matter.

9. In my opinion, the case of the petitioner is squarely covered by the ratio laid down by the Full Bench in **the State of**



Bihar & Anr. vs. Bhagwan Singh (supra). The petitioner was absorbed against a permanent post in regular establishment on 12.09.2009. The service rendered by him prior to that period as a daily wage employee would not qualify for pension. The new pension scheme came into force with effect from 01.09.2005. Since the petitioner was absorbed against a substantial post in regular establishment after the new pension scheme came into force, he cannot be granted pensionary benefits under the old pension scheme.

10. In that view of the matter, I see no merit in this application. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	3.12.2016
Transmission Date	

