IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 21050 of 2011

==

Brahmadeo Jha Son of Late Chandu Jha resident of Mohanpur, P.O. Ramchandarpur, P.S. Barahia, District- Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Bihar, Patna.
3. Director Primary Education, Bihar, Vikash Bhawan, Patna.
4. District Education Officer, Lakhisarai.
5. District Programme Officer, Lakhisarai.
6. Accountant General Birchand Patel Path, Bihar, Patna.

.... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. A. K. Gautam, Advocate.
For the State	:	Mr. P. N. Sharma, A.C. to A.G.
For the Accountant General (Respondent No. 6)	:	Mr. Binod Kumar Labh, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the parties.

The only issue which remains unresolved is whether the petitioner's service on a temporary basis from 03.10.1973 to 31.03.1975 is pensionable under the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules').

The petitioner's service was regularized with effect from 01.04.1975 and upon his superannuation, he has been granted pension but for the period when he was temporarily appointed on the initial post has not been counted for the reason that as per Rule 61 of the Bihar Pension Rules, such temporary period is not pensionable.

Learned counsel for the petitioner submits that as per the admission of the State itself, since the service of the petitioner was regularized with effect from 01.04.1975 and there has not been any break in service, the temporary period has to be counted as per the aforesaid Rule 61 of the Rules.

Learned counsel for the State submits that appointment of the petitioner itself shows that his service was purely temporary and the payment was also made to him from the funds of the Central Government. It is thus submitted that as per Rule 61 of the Rules, the service of the petitioner, both having been temporary and not paid by the funds of the State Government, cannot be counted for pensionary benefits.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the considered opinion that the interpretation given to Rule 61 of the Rules by the respondents is not the actual position. The Rule clearly extended the benefit of counting of temporary service or officiating service under the State Government when followed by permanancy, the only exception being that the same should be in non-pensionable establishment and period of service paid from contingencies.

In the present case, it is not the case of the State that the post on which the petitioner was initially appointed, may be on a temporary basis, was not pensionable and further the payment was made from contingencies. The relevant documents which have been brought on record by the

State itself show that the payment initially was by the Central Government from a particular plan head and thus cannot be said to be paid from contingencies. The two conditions not being applicable in the case of the petitioner, the natural corollary is that the benefit of Rule 61 of the Rules has to be given to the petitioner.

Accordingly, the application stands disposed off holding that the petitioner shall be entitled for counting of his past services for the purposes of pensionary benefit rendered from 03.10.1973 to 31.03.1975.

The benefits accruing to the petitioner on account of such shifting of his period of service for the purposes of pensionary benefits be paid to him within eight weeks from the date of production of a copy of this order before the respondent no. 5.

The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

Anand Kr.

U			