

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18276 of 2012

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1. The Union of India through General Manager, East Central Railway, Hajipur (Vaishali)
 2. The Divisional Railway Manager, East Central Railway, Sonapur.
 3. The Divisional Railway Manager (P), East Central Railway, Sonapur.
 4. The Senior, D.F.M., East Central Railway, Sonapur (Saran)

.... Petitioner/s

Versus

Shiv Nath Jha, S/O Late Subodh Narayan Jha, Resident of Village + P.O- Baghant, Via- Manigachi, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate
Mr. Din Bandhu Singh, Advocate
For the Respondent/s : Mr. S.N. Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-04-2016

This writ petition is by the Railways being aggrieved by the order of the Central Administrative Tribunal, Patna Bench, Patna dated 28.06.2011, passed in O.A. No. 212 of 2010 whereby the application of the contesting respondent for being granted the benefits of the old pension scheme was allowed.

We have heard Sri D.K. Sinha learned Senior Counsel in support of the writ petition on behalf of the Railways.

The facts are noted in the order of the Tribunal. They are not disputed. It appears that the contesting respondent was



initially engaged as casual labourer on 20.01.1981 and was granted temporary status with effect from 01.04.1983. He was, subsequently, promoted to Clerk on ad hoc basis on 01.12.1987 but was then reverted to the temporary status. Later on he was dismissed with effect from 30.06.1993. The matter came to the Tribunal at that instance and the Tribunal directed that though there may have been some illegality in his promotion, his initial recruitment granting him temporary status with effect from 1983 was not in dispute. It was correct. Tribunal, accordingly, directed the contesting respondent to be reinstated in the same position. It is pursuant to this recruitment that he was regularized with effect 05.08.2005. It is with effect from 01.01.2004 that the new pension scheme came into play.

Railways contend that as the person employed was regularized after this cut-off-date he would not be covered by old pension scheme.

We have considered the matter. First thing to be noted is that the employee was already in Railway service from 1983 as in temporary status. His service book has already been opened. His deductions for payment and other retiral benefits were, accordingly, being done. He had continuity in service when he was regularized with effect from 05.08.2005. In that view of the matter, it would be wrong to say that he came in service only after the new

pension rules. However, we may not labour on this for long because in the case of The Union of India and others Vs. Raj Kumar Yadav and others being C.W.J.C. No. 10642 of 2013 a Division Bench of this Court of which (Navaniti Prasad Singh, J.) was a party, by its judgment dated 13.04.2015 has already noticed that the Railway Board has since taken a decision that all substitute employees, who were working prior to 01.01.2004 but had been regularized thereafter, would continue under old pension scheme. That would equally apply to the present case. Here, the applicant before the Tribunal was not a substitute employee but had already been granted temporary status 20 years prior to the cut-off-date of 01.01.2004.

In that view of the matter, we do not find any merit in this writ petition. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajesh/-

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CAV DATE	
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