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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20117 of 2012

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Kashi Nath Singh Son Of Radhacharan Singh, resident of Village- Uttardahan, P.O.- Manudihri P.S.- Jagdishpur, Bhojpur (Bihar)

.... Petitioner

Versus

1. The State Of Bihar through the Principal Secretary Human Resources Development Deptt., Bihar, Patna
2. The District Superintendent of Education, Arrah, Bhojpur
3. The Regional Education Officer, Bihia, Bhojpur
4. The Accountant General (A & E), Bihar, Patna
5. The Assistant Accountant General/ Sr. Accountant Officer, Bihar, Patna
6. The Treasury Officer/ Sub Treasury Officer, Ara (Bhojpur)
7. The District Education Officer, Bhojpur, Arah

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22655 of 2012

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Ramlayak Singh S/O Baldhari Singh R/O Village- Dhemha, P.O.- Bagwan, P.S.- Udwantnagar, District- Bhojpur (Arrah)

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Dept. Bihar Patna
2. The District Superintendent of Education, Arrah Bhojpur
3. The Regional Education Officer, Bihia Bhojpur, (Arrah)
4. The Accountant General (A & E), Bihar Patna
5. The Assistant Accountant General/ Sr. Account Officer, Bihar Patna
6. The Treasury Officer/ Sub-Treasury Officer, Arrah, Bhojpur
7. The District Education Officer, Bhojpur Arrah

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22467 of 2012

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Paras Nath Singh S/O Late Kuldip Singh R/O Mohalla - Badaura, P.O. - Shivpur, P.S. - Sandesh, District - Bhojpur (Arrah)

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Dept. Bihar, Patna
2. The District Superintendent Of Education Arrah Bhojpur
3. The Regional Education Officer, Bihia Bhojpur (Arrah)
4. The Accountant General (A & E), Bihar, Patna
5. The Assistant Accountant General/Sr. Account Officer, Bihar, Patna
6. The Treasury Officer/Sub-Treasury Officer, Arrah, Bhojpur
7. The District Education Officer, Bhojpur, Arrah

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22395 of 2012

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Baijnath Prasad S/O Late Ramdas Sah R/O Village + P.O.- Kamriyavan, P.S.- Teeyar, District- Bhojpur (Arrah)

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Dept. Bihar Patna
2. The District Superintendent of Education, Arrah, Bhojpur
3. The Regional Education Officer, Bihia Bhojpur, (Arrah)
4. The Accountant General (A & E), Bihar Patna
5. The Assistant Accountant General/ Sr. Account Officer, Bihar Patna
6. The Treasury Officer/Sub Treasury Officer, Arrah, Bhojpur

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7. The District Education Officer, Bhojpur Arrah

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22352 of 2012

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Ramadhar Ram S/O Late Radha Chaudhary R/O Village + P.O.- Asani, P.S.- Udwantnagar, District- Bhojpur (Arrah)

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.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Dept., Bihar Patna
2. The District Superintendent of Education, Arrah Bhojpur
3. The Regional Education Officer, Bihia Bhojpur, (Arrah)
4. The Accountant General (A & E), Bihar Patna
5. The Assistant Accountant General/ Sr. Account Officer, Bihar Patna
6. The Treasury Officer/ Sub Treasury Officer, Arrah, Bhojpur
7. The District Education Officer, Bhojpur Arrah

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22276 of 2012

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Nand Gopal Singh S/O Late Dudhnath Singh R/O Mohalla- Jagdeo Nagar, P.O.- Anaith,P.S.- Nawada (Arrah), District- Bhojpur

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Deptt., Bihar, Patna
2. The District Superintendent of Education, Arrah, Bhojpur
3. The Regional Education Officer, Bihia, Bhojpur (Arrah)
4. The Accountant General (A&E), Bihar, Patna
5. The Assistant Accountant General/Sr. Account Officer, Bihar, Patna

6. The Treasury Officer/Sub-Treasury Officer Arrah, Bhojpur
7. The District Education Officer, Bhojpur, Arrah

.... Respondents

with

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Civil Writ Jurisdiction Case No. 22474 of 2012

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Triveni Chaudhary S/O Radha Chaudhary R/O Akhauri Mohalla, Ward-10, Jagdishpur, P.S. - Jagdishpur, District - Bhojpur (Arrah)

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Human Resources Development Dept. Bihar, Patna
2. The District Superintendent of Education, Arrah Bhojpur
3. The Regional Education Officer, Bihia Bhojpur (Arrah)
4. The Accountant General (A & E), Bihar, Patna
5. The Assistant Accountant General/Sr. Account Officer, Bihar, Patna
6. The Treasury Officer/Sub-Treasury Officer, Arrah, Bhojpur
7. The District Education Officer, Bhojpur, Arrah

.... Respondents

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Appearance :

(In CWJC No.20117 of 2012)
For the Petitioner/s : Mr. Mahendra Prasad Verma, Advocate
For the Respondent/s : Mr. Tej Bahadur Singh AAG7
(In CWJC No.22655 of 2012)
For the Petitioner/s : Mr. Mahendra Prasad Verma, Advocate
For the Respondent/s : Mr. Rajesh Kumar GP-21
For Accountant General : Mr. Jitendra Kumar Roy, Advocate
(In CWJC No.22467 of 2012)
For the Petitioner/s : Mr. Paras Nath Singh, Advocate
For the State : Mr. J. S. Arora
For Accountant General : Mr. Binod Kumar Labh, SC
(In CWJC No.22395 of 2012)
For the Petitioner/s : Mr. Mahendra Prasad Verma, Advocate
For the Respondent No.5 : Mr. Ramjesh Singh, Advocate

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For the Accountant General : Mr. Ram Yash Singh, Advocate
(In CWJC No.22352 of 2012)
For the Petitioner/s : Mr. Mahendra Prasad Verma, Advocate
For the Respondent/s : Mr. Anuj Kumar, AC to GP-24
(In CWJC No.22276 of 2012)
For the Petitioner/s : Mr. Mahendra Prasad Verma, Advocate
For the Respondent/s : Mr. Ranjit Kumar, AC to GP-26
For Accountant General : Mr. Kumar Priya Ranjan, Advocate
(In CWJC No.22474 of 2012)
For the Petitioner/s : Mr. Mahendra Prasad Verma, Advocate
For the Respondent/s : Mr. Madhaw Prasad Yadav, GP-23
For the Accountant General : Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-11-2016

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the Accountant-General.

2. This batch of writ petitions filed under Article 226 of the Constitution of India raises a common issue primarily relatable to the right of the retired teachers of primary schools, who were initially appointed on stipend basis on a non-substantive post and whose services were subsequently adjusted in a permanent establishment of the State for counting the period during which they rendered their services on stipend basis for the purpose of pension, revision of pay, etc.

3. The petitioners were initially appointed as Assistant Teachers in different schools of Bhojpur district on

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monthly stipend on purely temporary basis. Subsequently, they were adjusted in regular scale. After working for over three decades in regular establishment on attaining the age of superannuation, they retired from service between 31st July, 2007 and 31st August, 2009.

4. It is not in dispute that they have been paid their wages while working on stipend basis and they got their salary and other emoluments in regular scale after their adjustment in permanent establishment. It is also not in dispute that the services rendered by them in permanent establishment against substantive posts have been computed by the State for the payment of pension and they are getting their pension regularly.

5. The contention of the petitioners is that they have not been paid the regular scale since the date of their initial appointment, i.e., the date when they were appointed on temporary basis on monthly stipend basis and the period of stipend has not been counted for giving them pension and revision of pay.

6. The issue raised in these petitions is no more *res integra*. In the matter of ***State of Bihar & Anr. vs. Bhagwan Singh*** (since dead) ***[2014(4) PLJR 229]***, wherein a similar issue was raised before this Court, considering the provisions prescribed

under Rule 45, 56, 58 and 61 of the Bihar Pension Rules, 1950, a Full-Bench of this Court held in paras 11, 12, 13 and 14 as under:-

> "*11. Rule 56 of the Pension Rules provides 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 thereof provides that the service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-*
>
> > *(i) The service must be under Government.*
> >
> > *(ii)The employment must be substantive and permanent.*
> >
> > *(iii) The service must be paid by Government.*
>
> *12. Rule 61 thereof provides, 'service does not qualify unless the Government servant holds substantively a post on a permanent establishment'. Rule 45 thereof expressly excludes certain service for computation of pension. Clause (a) thereof 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 wages without specified limit of time or duty'.*
>
> *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"

7. In para 17 of the aforesaid judgment, the Bench expressly overruled the contrary view taken by a Division-Bench of this Court in the matter of ***State of Bihar & Ors. vs. Chandrika Rai***

& Ors. (Letters Patent Appeal No. 1343 of 1998). The Bench also overruled all other judgments of this Court which had taken a contrary view in the matter.

8. Recently, in the matter of ***Ram Bilash Prasad Singh vs. the State of Bihar & Ors. (CWJC No. 6103 of 2012),*** I also had an occasion to examine the issue raised in this batch of writ petitions in connection with primary school teachers initially appointed on stipend basis and subsequently absorbed in regular establishment. In that case after considering the facts of the case in detail and placing reliance on the ratio laid down in ***State of Bihar & Anr. vs. Bhagwan Singh*** (supra), vide order dated 11.11.2016, I have held as under :-

> ***"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 1^{st} 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."*

9. Keeping in mind the aforesaid decisions, I see no merit in the claim of the petitioners for counting the period during which they rendered their services on stipend basis for the purpose of pension and/or pay revision. Moreover, the claim of the petitioners is stale one, as they never raised these issues while they

were in service.

10. Accordingly, the writ petitions, being devoid of any merit, are dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	...
Uploading Date	22.11.2016
Transmission Date	