

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5303 of 2016

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Ganesh Paswan, Son of Late Dasrath Paswan, resident of Village - Salempur,
Police Station - Hulasganj in the District of Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. Joint Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Gaya.
5. The Superintending Engineer, Water Ways Circle, Water Resources Department, Gaya.
6. The Executive Engineer, Water Ways Division, Water Resources Department, Gaya.
7. The District Magistrate-cum-Collector, Gaya.
8. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar, Advocate
For the State	:	Mr. Dharendra Kumar, A.C. to A.A.G. 6
For the Accountant General	:	Mr. Jitendra Kumar Roy, Advocate
		Ms. Nikki Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 15-11-2017

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following reliefs:

“I. For quashing the Sub-Clause 9 of the Office order contained in Memo No. 2059 dated 17.12.2013 issued under the signature of Chief Engineer, Water Resources Department, Gaya by which it has been asserted that the appointment of the petitioner would be valid under Resolution of the Finance Department vide Resolution No. 2469 dated 16.11.2005 and also direct the respondents to treat the service of the petitioner under Old Pension Scheme under Bihar Pension Rule, 1950.

II. Also to direct the respondents to



calculate the service of the petitioner rendered by him from the date of appointment to the date of regularization i.e. from 1.12.1982 to 16.12.2013 for only for the purpose of calculation of Pension and other pensionary benefits and further direct the respondents to calculate/fix the pension of the petitioner and also to make payment of other pensionary benefits i.e. Gratuity, Leave Encashment, Group Insurance etc. as per Bihar Pension Rule, 1950 under Old Pension Scheme.

III. Also to direct the respondents to treat the service of the petitioner covered by G.P.F. Scheme and not by Contributory Pension Scheme, 2005.

IV. Also to direct the respondents to make payment of the amount of pensionary benefits i.e. Pension, Gratuity, Leave Encashment, Group Insurance etc. along with statutory/penal interest at the rate of 12% per annum.

V. Also for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law”.

3. At the very outset, learned counsel for the State submitted that the writ petition is fit to be dismissed on the ground that challenge is to a condition in the terms of conditions of service of the petitioner while his services were regularized and, thus, after retirement, coming to the Court challenging one of the terms is impermissible as it is clearly an afterthought and should not be entertained. It was further submitted that the writ petition by an identically situated person has been dismissed by a co-ordinate Bench by order dated 22.09.2017 in C.W.J.C. No. 4522 of 2016.



4. Learned counsel for the petitioner submitted that in the present case, the Court may take a different view, for the reason that the petitioner, within a few months of his retirement has moved the Court and also within three years of the cause of action. He also relied upon a decision of a co-ordinate Bench of this Court in the case of **Sheela Devi vs. State of Bihar** reported as **2012(4) PLJR 723**, in which it has been held that the writ petitioner having been appointed on muster roll in the year 1980 and his service having been regularized in the year 2006, he shall not be governed by Contributory Pension Scheme, 2005 by which cut-off-date for pension/ family pension has been fixed as 09.09.2005.

5. Learned counsel for the State submitted that in the said case, the person was appointed on muster roll whereas in the present case, the petitioner was a daily wage employee and for the first time by the impugned order his service was regularized and, thus, the petitioner cannot get the benefit of the aforesaid order.

6. Having considered the matter, the Court finds substance in the objection raised by learned counsel for the State, both on the ground that a co-ordinate Bench has upheld the objection that challenge to condition of regularization made after superannuation is not fit to be entertained and also the fact that such condition being explicitly stated in the very order of regularization, it



was incumbent upon the person concerned either to accept or assail the same before the competent forum. Choosing not to do so and waiting for his superannuation and then challenging the same would not persuade the Court to exercise its extraordinary, prerogative and discretionary writ jurisdiction under Article 226 of the Constitution of India.

7. For the reasons aforesaid, the writ petition stands disposed off.

(Ahsanuddin Amanullah, J.)

P. Kumar

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