IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1465 of 2016

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Subhash Chandar Saha son of Late Dhuri Prasad Saha, resident of village- Alampur Azam Nagar, Post office and Police Station- Azam Nagar, District Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary to the Government, P.H.E.D., Bihar, Patna, Bisheshwaraiya Bhavan, Bailey Road, Patna.
2. The Chief Engineer, (Mechanical), P.H.E.D., Bihar, Patna, Bisheshwaraiya Bhavan, Bailey Road, Patna.
3. The Superintending Engineer, Public Health, Purnea Circle, Purnea.
4. The Executive Engineer, Public Health Division, Katihar.
5. The Accountant General, Bihar, Veerchand Patel Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Advocate

For the State : Mr. Ranjan Kumar, A.C. to G.A.-12

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-07-2017

The issue in the present writ petition is whether the period of service rendered as a work charged or a daily wage employee by the petitioner would entitle him to receive pension.

2. The petitioner had been engaged on daily wages on 05.09.1980. He was taken into work charged establishment on 25.01.1988. On stoppage of budgetary allocation to work charged establishment and on finding out the appointment in work charged establishment to be beyond the rules and decisions of the State Government various employees in the establishment were issued notice and were reverted to daily wages in the year, 2002. The petitioner was one amongst them. He attained the age of superannuation on 31.01.2005. At that time, he was rendering his service as a daily wage employee.

3. The instant writ petition has been filed by the petitioner with a prayer for commanding the respondents to count the entire service of the petitioner rendered as a work charged or a daily wage employee as qualifying service for pension and pay pension with all retirement benefits and consequential benefits of service in pursuance of Bihar Pension Rules, 1950.

4. The claim of the petitioner has been contested by the State Government.

5. Since the facts of the case are not in dispute, I shall first consider the relevant provision of the Bihar Pension Rules, 1950.

6. Rule 58 of the Bihar Pension Rules, 1950 stipulates that service of a Government servant does not qualify for pension unless it conforms to the following three service condition.

> First – The service must be under Government.
>
> Second – the employment must be substantive and permanent.
>
> Third – the service must be paid by Government.

7. Rule 61 of the aforesaid Rules provides that service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

8. Taking into consideration Rules 58 and 61 of the Bihar Pension Rules, 1950 a Full Bench of this Court in the matter of **The State of Bihar & Anr. vs. Bhagwan Singh (since dead), [2014(4) PLJR 229]** held that the service rendered by an employee as daily wage employee cannot be said to be a service on a substantive post in permanent establishment. It held that such service would not qualify for pension.

9. As far as the issue of work charged employment of the petitioner and his entitlement to pension with reference to the provisions of the Bihar Pension Rules, 1950 is concerned, the same fell for consideration before a Division Bench of this Court in **The State of Bihar & Ors. vs. Bimla Devi, [2016(1) PLJR 452].** Answering the said issue, the Division Bench held:-

> **30.** Coupled with the above, we find, from the pleadings on record, that it was never the case of the widow of the deceased employee at any stage that her husband was taken into *work charged* establishment after following the mandate of Articles 14 and 16 of the Constitution of India. Considering the Supreme Court's decision in the case of ***State of Rajasthan vs. Kunji Raman*** (supra), we are of the considered view that the manifest distinction between a *work charged employee*

> and *regular employee* has to be borne in mind, while deciding the question as to whether family members of the employees in *work-charged establishment,* would be entitled to *family pension* or not.
>
> **31.** We find direct answer to the legal issue involved in the present appeal in the decision of the Supreme Court in the case of ***Uttar Haryana Bijli Vitran Nigam Ltd***. (supra). We accordingly hold that the service of the employees, working under *work charged* establishment, is not *pensionable* under the Bihar Pension Rules, 1950. The family members of such an employee will, therefore, not be entitled to *family pension*.

10. In view of the foregoing binding precedents, the period of service rendered by the petitioner either in work charged establishment or as a daily wage employee is not liable to be counted for the purpose of computing qualifying service for pension.

11. Accordingly, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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