# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.13340 of 2015**

======================================================

Sri Bachcha Dubey son of Late Kushahar Dubey R/o Village- Sariyan Pahad Sidhawalia District- Gopalganj at retired Nalkup Khalasi P.H. Section, Baikunthpur, P.H. Division, Gopalganj

.... .... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, PHED Bihar, Patna
2. The Engineer-in-Chief, PHED, Bihar, Patna
3. The Accountant General Bihar Birchand Patel Path, Patna
4. The Executive Engineer, P.H. Division, Gopalganj
5. The Addl. Secretary, Finance Department, Government of Bihar, Patna
6. The Superintending Engineer, P.H. Circle, Gopalganj
7. The Sub-Divisional Engineer, P.H. Sub-Division, Baikunthpur Gopalganj

.... .... Respondents

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner | : | Mr. Kumar Veerendra Narayan, Advocate |
| For A.G. Bihar | : | Mr. Satyendra Kumar Jha, Advocate |
| For the State | : | Mr. S. Raza Ahmad, Senior Advocate (AAG-5) |
| | | Mr. Vishmambhar Prasad, AC to AAG-5 |

======================================================

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

**Date: 22-11-2017**

Heard learned for the petitioner, State and Accountant General.

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

> " (i) For payment of GPF and gratuity calculating service since 1988 continuously till retirement.
>
> (ii) For fixation of pension after revised the pay since 1996.
>
> (iii) For the order of deposit the paid amount of GPF with interest since 2002 till 31.12.2006

WEB COPY

> during reversion period.
>
> (iv) For payment of benefit of ACP/MACP calculating the service period since 1988.
>
> (v) For the order to deposit the CPF amount in GPF head by the Executive Engineer, P.H Division Goplaganj deducted since 2006 till retirement.
>
> (vi) For quashing and declaration of para 5 (ii) (iii) & (v) of the notification no.10709 dated 17.10.2013 issued by the Finance Department, Government of Bihar, Patna as it is not enforceable to the employee of old absorbed employees.
>
> (vii) For any other reliefs for which the petitioner is entitle for the ends of justice."

3. The petitioner has been denied pensionary benefit with regard to his past service only on the basis of the resolution of the State Government in the department of Finance contained in Memo No.10710 dated 17.10.2013, which has given certain modality with regard to computing of the service period of an employee whose service is regularized later on from either daily wages or Work Charge Establishment. One of the conditions is that five years of service in the Work Charge Establishment shall be counted as one year for the purposes of pension.

4. Learned counsel for the petitioner submitted that he was

WEB COPY

initially appointed on muster roll in the year 1979 and thereafter in the Work Charge Establishment in the year 1988 and thereafter was reverted to muster roll in the year 2002 leading to him and other similarly situated persons moving before this Court and ultimately by an order of a Division Bench in the year 2006 in C.W.J.C. No.6115 of 2002 and analogous cases, his case along with cases of similarly situated persons in the entire State of Bihar under all the department of the State Government, were considered and his services were regularized by order contained in Memo No.72 dated 01.12.2006 issued by the respondent no.4. Thereafter, the petitioner, when he was not getting his salary for the period of reversion from Work Charge to Muster Roll, moved the Court in C.W.J.C. No.21243 of 2012 and by a common order in many cases, the writ petition was disposed of on 16.05.2013 in similar terms to order dated 20.12.2011 passed in C.W.J.C. No.6004 of 2007, by which the payment was allowed. Learned counsel submitted, that thereafter the petitioner superannuated on 31.07.2015. Learned counsel further submitted that the respondents have denied full pensionary benefits to the petitioner with regard to his entire service period including grant of MACP. It was submitted that the reliance of the authorities on the above mentioned resolution of the Finance Department dated 17.10.2013 is misplaced for the reason that it deals with extending the cut off date

WEB COPY

with regard to persons who would be entitled for regularization of their services. He further drew attention to the Court to order dated 12.04.2012 passed by a Co-ordinate Bench in C.W.J.C. No.19195 of 2011 in the case of **Prem Kumar Jha and others vrs. The State of Bihar and others** in the case of similarly situated persons, in which it has been held that their entire service period shall be considered and taken into account for the purpose of ACP and pensionable service.

5. In light of the submissions made by the parties on earlier occasions, the Court, by order dated 22.09.2017, had granted time to the learned State counsel to examine the claim of the petitioner keeping in mind the aforesaid order dated 12.04.2012 and also that the same had been implemented by the State Government and a notification to this effect had also been issued.

6. Today, learned counsel for the State submitted that in view of the resolution of the State Government contained in Memo No. 10709 dated 17.10.2013, which came into effect from the date of the notification, and the petitioner having superannuated subsequent to the same, his case shall be governed by the provisions of the said resolution. However, when called upon to assist as to how the said resolution was even remotely relevant to the issue involved in the present case and how the State could distinguish the case of the petitioner from that of the petitioner of C.W.J.C. No.19195 of 2011,

WEB COPY

learned counsel could not do the same.

7. Having considered the facts and circumstances of the case and submissions of the learned counsel for the parties, the writ petition stands allowed. It is held that the resolution dated 17.10.2013 is not applicable or relevant for the purposes of the issue involved in the present writ application. In terms of an earlier direction of a Division Bench of this Court, the case of the petitioner was considered by the competent authority and his service came to be regularized by order dated 01.12.2006. Thus, the petitioner automatically became a regular government servant and his services were to be reckoned as and considered in terms of the then existing government policy/circular/statute relating to condition of his service and pension/ACP/MACP. The contention of learned counsel for the petitioner is correct that the resolution of the State Government dated 17.10.2013 is only for such persons whose services had not yet been regularized and the Government, by way of a grace, had extended the cut off date for consideration of regularization of the services of those employees, from an earlier fixed cut off date. Thus, it is apparent that the said resolution applied to cases of persons whose service were to be considered for regularization after 17.10.2013 and only in such cases, can the State take a stand that the conditions stipulated in the said resolution would apply to the persons so regularized. In the

WEB COPY

present case, the petitioner's services having been regularized by order dated 01.12.2006, the circular of the State Government dated 17.10.2013 has no relevance or applicability with regard to the issue involved. Moreover, the Court finds that the decision relied upon by learned counsel for the petitioner in the case of **Prem Kumar Jha** (supra) squarely covers the issue as well as the facts of the present case and, thus, the said decision which has also been accepted and implemented by the State, binds the State, both in law as well as in terms of its own litigation policy, not to make a discrimination or distinction in the case of the petitioner.

8. Accordingly, the petitioner is held entitled for counting of his entire period when he came into the Work Charge Establishment in the year 1988, for all pensionary benefits/ACP/MACP, as the case may be. The same be given to him within four months from the date of production of a copy of this order before the respondent no.4.

**(Ahsanuddin Amanullah, J)**

N.H./-

| | |
|---|---|
| AFR/NAFR | AFR |
| CAV DATE | N/A |
| Uploading Date | 22-11-2017 |
| Transmission Date | |

WEB COPY