IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.780 of 2016

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Most. Mani Devi wife of Late Gopal Rai, Keyman PH Sub.Div. Dalsinghsarai, Samastipur at present resident of village -Bangaon, P.S.- Bangaon, District- Saharsa

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Vishweshariya Bhawan, Patna
2. The Engineer-in-Chief, Public Health Engineering Department, Vishweshariya Bhawan, Patna
3. The Chief Engineer (Mechanical), Public Health Engineering Department, Vishweshariya Bhawan, Patna
4. The Superintending Engineer, P.H. Circle, Darbhanga
5. The Executive Engineer, P.H. Division, Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate
	:	Mr. Surya Kant Mishra, Advocate
	:	Mr. Sushil Kumar Jha, Advocate
For the State	:	Mr. Anil Kumar Singh, G.P.-26

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-07-2017

The petitioner is widow of a daily wage employee. She has filed this writ application with a prayer for direction commanding the respondents to release difference of salary payable to her deceased husband Gopal Rai, who died on 31st January, 2013 while discharging his duties on daily wage employment as Keyman under P.H. Sub Division, Dalsinghsarai, Samastipur for the period from June, 2002 till his death on daily wage and to make payment of death-cum-retirement benefits treating her husband to be engaged in work charged establishment.

2. The brief facts of the case are that the petitioner's husband was engaged as a daily wage employee on 01.01.1980. While being in such employment, he rendered his service as Keyman-cum-Chaukidar. Later on, he was taken into work charged establishment as Keyman with effect from 01.03.1988. However, he was reverted as a daily wage employee with effect from 02.09.2002 on finding that the appointment in work charged establishment was ***non-est*** and against the government decisions and circulars. Eventually, the husband of the petitioner died on 31.01.2013 while discharging his duties in P.H. Sub Division, Dalsinghsarai, Samastipur as a daily wage employee.

3. The contention of the petitioner is that reversion of the husband of the petitioner from work charged establishment to daily wage employment was wholly illegal, arbitrary and unjust.

4. In my opinion, the writ petition cannot be allowed for more than one reason. Firstly, because the reversion of the husband of the petitioner was made as back as in 2002. It was never challenged by him during his life time. After his death, the petitioner has raised this issue before this Court by filing the present writ petition on 12.01.2016. There is no explanation for inordinate delay of fourteen years in raking up the issue of reversion of the deceased employee from work charged establishment. The writ petition is fit to be dismissed on the ground of delay and laches alone.

5. Secondly, because Rule 58 of the Bihar Pension Rules, 1950 states that a Government servant does not qualify for pension unless his appointment is against a substantive and permanent post.

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.
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> **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 above discussions and in view of the binding precedents of the Full Bench and the Division Bench of this Court noted above, the period of services rendered by the deceased employee in work charged establishment or as a daily wager is not liable to be counted for the purpose of qualifying service for making the petitioner entitled to receive family pension.

11. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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