

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.872 of 2016

- =====
1. Rukmini Devi wfe of Late Shiv Chandra Singh, Resident of Village + P.S.-
Cheria Bariarpur, P.O- Sripur, District - Begusarai.
 2. Manju Devi, wife of Late Ram Swarath Singh, Resident of Village- Ratanpur,
P.S. & District- Begusarai.
 3. Veena Devi wfe of Late Arun Prakash Singh, Resident of At + P.O.-Bari
Eghu, P.S.- Muffasil, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Public Health
Engineering Bihar, Patna.
2. The Secretary, Department of Public Health Engineering Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of
Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum- Special Secretary, PHED, Bihar, Patna.
6. The Chief Engineer, Department of PHED (Mechanical), Bihar, Patna.
7. The Superintending Engineer, Public Health Engineering Department, Begusarai
Circle, District- Begusarai.
8. The Executive Engineer, Public Health Division, Begusarai.
9. The District Magistrate, Begusarai.
10. The Accountant General (A & E), Bihar, Patna.
11. The District Accounts Officer, District- Begusarai.
12. The Treasury Officer, District- Begusarai.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Siyaram Pandey, Advocate
For the Accountant General : Mr. Vivekanand Kumar, Advocate
For the State : Mr. Balram Kapri, A.C. to S.C.-26

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 05-07-2017



The question which has arisen in the present writ application is whether the family members of the deceased employee, who was appointed in work charged establishment and was reverted in daily wage establishment and died while working as a daily wage employee would be entitled to family pension under the Bihar Pension Rules, 1950.

2. The husband of petitioner no.1 had been engaged in work charged establishment on 19.02.1988. Later on, he was reverted to daily wage employment on 13.04.2002. He died on 16.06.2004 while on daily wage employment. The husband of petitioner no.2 was appointed in work charged establishment on 19.02.1988. Later on, he was reverted to daily wage employment on 13.04.2002. He died on 08.01.2005 while he was on daily wage employment. The husband of petitioner no.3 was appointed on 19.02.1988 in work charged establishment. Later on, like the other two petitioners, he was reverted to daily wage employment on 13.04.2002. He also died while rendering service as a daily wage employee.

3. It would be evident that after lapse of almost fourteen years from the date of reversion, a prayer has been made by the petitioners in the present writ application to regularize the services of the deceased employees so that they may become entitled to receive family pension. There is no explanation for inordinate delay of



fourteen years caused in filing the writ application for the relief prayed for.

4. It has been contended by the learned counsel for the petitioners that reversion of the husband of the petitioners from work charged establishment to daily wage employees was wholly illegal, arbitrary and unjust. He submitted that the deceased employees had continuously worked for more than a decade in work charged establishment and, thus, their widows are entitled to receive family pension.

5. On the other hand, learned counsel for the State submitted that in view of the provisions prescribed under Rule 58 of the Pension Rules, 1950, an employee who was not working on substantive post and was working on Muster Roll would not be entitled for pension and, thus, on his death his dependants or widow would not be entitled to receive family pension.

6. I have heard learned counsel for the parties and perused the records. I find substance in the arguments of the learned counsel for the State.

7. In the opinion of this Court, the writ petition deserves to be dismissed for two reasons. Firstly, on the ground of delay and laches because husband of the petitioners did not challenge their order of reversion from work charged establishment while they were alive



and the petitioners have approached this Court after a decade asserting their right to receive family pension. Thus, even though Article 226 of the Constitution of India does not prescribe any limitation for filing writ petition, it is well settled in law that it should be filed within a reasonable time. It is well known that law leans in favour of those who are alert and vigilant. Secondly, because Rule 58 of the Bihar Pension Rules, 1950 states that a Government servant does not qualify for pension unless his employment is against a substantive and permanent post. Admittedly, initially the husband of the petitioners worked in work charged establishment and they were reverted to daily wage employee and at the time of death they were on daily wage employment. Even otherwise, in view of the ratio laid down in **the State of Bihar & Ors. vs. Bimla Devi, [2016(1) PLJR 452]**, the writ application of the petitioners cannot be allowed.

8. 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.

9. Rule 61 of the aforesaid Rules provides that service does



not qualify unless the Government servant holds substantively a post on a permanent establishment.

10. 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.

11. 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*."

12. In view of the discussions made above 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 employees in work charged establishment or as daily wager are not liable to be counted for the purpose of computing qualifying service for making the petitioners entitled to receive family pension.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.07.2017
Transmission Date	

