

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11711 of 2017

=====

Triveni Lal Dev Son of Sri Saryug Lal Dev Resident of Village - Pahaddibela,
P.O. + P.S. - Ghanshyampur, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
2. The Commissioner-cum-Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Engineer-in-Chief, Public Health Engineering Department, Government of Bihar, Patna.
4. The Chief Engineer, Public Health Engineering Department, Government of Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Department, Government of Bihar, Patna.
6. The Executive Engineer, Public Health Division, Munger.
7. The Sub Divisional Officer, Public Health Division, Munger.
8. The Executive Engineer, Public Health Division, Kharagpur, Munger.
9. The Executive Engineer, Public Health Rural Water Supply Division, Munger.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ambrish Kumar Jha
For the Respondent/s : Mr. S.Raza Ahmad -Aag5

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 18-04-2018 The issue involved in the present case is regarding considering the service rendered by the petitioner herein in the Government work charge establishment for the purposes of computing the period for grant of benefit of A.C.P., once such employees have been absorbed in Regular establishment of the Government. The said issue is indisputably no longer res integra, inasmuch as the same has been authoritatively adjudicated in a judgment rendered by a learned Division Bench of this Court, dated 20.10.2016 passed in L.P.A. No. 607 of 2012, wherein it has been held as follows:-



“(2) It is not in dispute that the writ petitioners, who are respondents in these appeals, were working in the work-charge-establishment since long. There were several rounds of litigations and ultimately on or about 30.11.2006, they were absorbed and regularized in service. A writ petition was filed by large number of such regularized employees (Annexure 7 to the writ petition) wherein, upon denial of applicability of GPF Scheme to them and forcing them to join the new CPF Scheme, this Court held that they were all in continuing service from before and were only regularized in the year, 2006. Therefore, being in the Government service from before, they cannot be taken to be new employees. Accordingly, the CPF Scheme was not applicable to them. When it came to these writ petitioners/respondents in the appeal, again similar disputes were raised including denial of counting of earlier period for the purposes of ACP, seniority and pay scale. Upon the writ petition being filed, the same was allowed following the judgment of this Court by another Single Judge being CWJC No 7178 of 2010 disposed of on 02.02.2011 (Ram Krishna Tanti –Versus-State of Bihar & Others). The writ petitioners also submitted that identically situated co-employees have been given all the benefits but merely because petitioners chose to litigate, they are being denied this benefit. Specific employees have been named. There is no rebuttal from the State.

(3) On behalf of the State, it is submitted that there was a ban in recruitment of employees in the work-charge-establishment and, as such, their prior services cannot be looked into. We fail to appreciate this submission. Firstly, the ban, which was initially placed in the year 1978, the cut off date was shifted from time to time and ultimately it was brought to 1990 that is after 1990, there



would be no recruitment. It is not the case of the State that the writ petitioners were recruited after 1990 rather the writ petitioners' case, which remains unrebutted, is that they were recruited on daily wages in 1980 and in work-charge-establishment in 1988. By Government order, they were regularized in service in the year 2006. These being the facts, we fail to appreciate how and why their past services cannot be looked into. Our attention has also been drawn to the Bihar State Employees Conditions of Service ("Assured Career Progression Scheme") Rules, 2003 wherein there is specific provision under Rule 4, Explanation 3 (ii a) which clearly predicates that the tenure of service as work-charge-establishment shall be counted for ACP, for employees who have been regularized from work-charge-establishment. Petitioners' case clearly falls within that. Thus, if the writ petitioners are considered as continuing employees for the purposes of GPF, ACP, they had been receiving remuneration from the State prior to their regularization, we are of the view that the learned Single Judge did not err in allowing the writ petition in the terms as was done."

In view of the aforesaid, the present writ petition is allowed and the Respondents-authorities are directed to consider the case of the petitioner within a period of four weeks from today in terms of the aforesaid judgment of this Court dated 20.10.2016 and grant the consequential benefits of A.C.P.

(Mohit Kumar Shah, J)

ajay gupta/-

U			
---	--	--	--

