

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21246 of 2012

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Sheo Kumari Devi wife of late Sharda Nand Mishra, resident of Village Deoram,
P.S. Bahera, District Darbhanga

.... Petitioner/s

Versus

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

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kr. Jha with
Mr. Surya Kant Mishra, Advocates

For the Respondents : Mr. Sajid Salim Khan, SC 25 with
Ms. Prakritita Sharma, AC to SC 25

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 06-04-2018

Heard learned counsel for the petitioner and State.

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

“(i) The respondents be commanded for release death-cum-retiral benefits including pension, gratuity, leave encashment, etc.



(ii) The past service of the husband of the petitioner in the work charge establishment be counted inter alia for fixation of pay scale, and arrear difference of salary from 14, July 2006 to November 2006 be released.

(iii) The petitioner be extended any other relief/reliefs for which he is found entitled.”

3. The late husband of the petitioner was initially engaged as daily wager on 01.05.1981 and he was brought under Work Charge Establishment on 21.03.1988. Thereafter, on 13.04.2002, a show cause was issued as to why he should not be reverted back to the status of a daily wager. He moved this Court in C.W.J.C. No. 6392 of 2002 against the said show cause and by order dated 23.05.2002, the Court granted interim stay against such reversion. On 13.07.2006, the writ petition was finally disposed off and the authorities were directed to consider the matter afresh. Pursuant to the same, as per the recommendation of a Three Men Committee his service was also regularized on 30.11.2006. The husband of the petitioner died in harness on 06.11.2011. The authorities have granted retiral benefits and also fixed family pension to the petitioner counting the length of service of her husband from 30.11.2006, on the ground that from the date of regularization only he is entitled.



4. At the very outset, learned counsel for the petitioner submitted that this Court earlier in C.W.J.C. No. 13340 of 2015 in the case of **Sri Bachcha Dubey Vs. The State of Bihar & Ors.** by judgment and order dated 22.11.2017, under identical circumstances, had held that the entire period since the said petitioner came into the Work Charge Establishment shall be counted for pensionary benefits/A.C.P./M.A.C.P., as the case may be. It was submitted that in the present case the respondents have denied such benefits, despite the fact that it is a case relating to the same Department of the Government. Learned counsel has further drawn the attention of the Court to the decision of Hon'ble the Supreme Court in Civil Appeal No. 1254 of 2018 the case of **Netram Sahu Vs. State of Chhattisgarh & Anr.** dated 23.03.2018 in which it has been held that the day a person is employed even on a daily wagger basis, if such service has continued uninterrupted followed by regularization, the entire period of service has to be counted for the purpose of making payment of gratuity which necessarily would be equally good in the case of other pensionary/ retiral benefits.

5. Learned counsel for the State submitted that basically the authorities have relied upon various circulars of the State Government which permit counting of only period after regularization for pensionary/post retiral benefits, especially the resolution of the



State Government in the Finance Department contained in Memo No. 10710 dated 17.03.2013. However, he fairly conceded that the said resolution was considered in the case of **Sri Bachcha Dubey** (supra) and the Court has held him entitled for counting of his period spent under Work Charge Establishment also. Learned counsel was fair while taking the stand that there is no difference of facts of the present case with that of **Sri Bachcha Dubey** (supra).

6. Having considered the matter, the Court finds that the petitioner is entitled to the relief claimed, and there is no occasion for the Court to take a different view than what has been taken in the case of **Sri Bachcha Dubey** (supra).

7. Accordingly, for the reasons enumerated in the said judgment, the present writ petition stands allowed. The petitioner is held entitled for payment of death-cum-retiral benefits on the basis of counting of the length of service of her late husband from 21.03.1988, i.e., when he was brought under the Work Charge Establishment. The same be paid to her within four months from the date of production of a copy of this order before the respondents no. 2 and 5.

(Ahsanuddin Amanullah, J)

Anjani/-

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