

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8695 of 2017

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1. Binod Kumar Singh Son of late Indal Singh Resident of Mohalla Badi Pahari Post Office -Soh Sarai, District- Nalanda.
 2. Sahdeo Prasad Son of late Chatrapati Das Resident of Village and Post Office Nagarnausa, Police Station Nagarnausa, District- Nalanda.
 3. Binod Shankar Jha Son of late Rajeshwar Jha Resident of Village- Moyadpur, Post Office Nauhatta, District- Saharsa.
 4. Awadhesh Kumar Son of late Shri Singh Resident of Village- Hasanchak, Post Office Harnaut, District Nalanda.
 5. Balmiki Prasad Son of late Banswari lal resident of Village- Karki Post Office Ariyari, District- Sheikhpura.
 6. Amaresh Kumar Singh Son of late Sakaldip Singh Resident of Village Iaranpur Post Office Islampur, District- Nalanda.
 7. Dharmeh Paswan Son of late Ramchandra Paswan Resident of Village Bhathar Post Office Bhathar District Nalanda.
 8. Krishna Nandan Prasad Son of late Sohrai Mahatok, Resident of Village and Post Office Nalanda District Nalanda.
 9. Anuj Kumar Singh Son of late Dinanath Singh Resident of Village Kamariya, Post office Imbrahimpur, District Arwal.
 10. Md. Shahabuddin Son of late Md. Ishaq Resident of Mohalla Shawai, Post Office Biharsharif, District Nalanda.
 11. Janardan Prasad Son of Ram Ishwar Prasad Resident of Village Jamunapur, Post Office Kairimeyar District Nalanda.
 12. Shajanand Singh Son of late Jhalakdeo Rai Resident of Village Salempur Post Office Sandesh District- Bhojpur.

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh
For the Respondent/s : Mr. S.Raza Ahmad, AAG-5

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 18-05-2018

The present writ petition has been filed for



considering the entire length of the service of the petitioners herein including the period during which the petitioners herein worked in the Work Charge Establishment i.e. the period from 1988 to 29.11.2006, (the date on which the petitioners were absorbed in the regular establishment) for the purposes of granting the benefit of assured career progression (A.C.P.) as well as for the purposes of computation of the service period for fixation and grant of pension.

The short facts of the case are that the petitioners herein were absorbed in the regular scale of pay with all admissible allowances in the Work Charge Establishment by the competent authority, in the light of the decision of the Departmental Establishment Committee held on 11.12.1987, in the year 1988 vide various orders contained in Annexure-1 series to the writ petition. Subsequently, the services of the petitioners was absorbed in the permanent establishment vide Memo No. 1133 dated 28.11.2006 vide order of the Chief Engineer (Mechanical) Public Health Engineering Department, Patna, and accordingly the order of absorption of the services of the petitioners was passed by the Executive Engineer on 29.11.2006.

The learned counsel for the petitioners has



submitted that the State Government has itself framed statutory rules regarding computing the entire service of the Work Charge Establishment employees for the purposes of computing the period for grant of A.C.P. and pension. It is submitted that similarly situated persons have been granted the benefits of first and second A.C.P., upon their writ petitions being allowed by this Court.

Per contra, the learned counsel for the respondents has submitted, referring to the counter affidavit filed on behalf of the respondent nos. 1 to 5, that the petitioners have been absorbed in regular establishment with effect from 19.11.2006 and they have been paid the difference of salary from 01.06.2002 to 28.11.2006 in pursuance of the order of this Court passed in CWJC No. 7211 of 2013. Though the respondents have not denied the claim of the petitioners herein, however, they have stated that firstly the claim of the petitioners is required to be considered in light of resolution no. 10710 dated 17.10.2013 and secondly, the benefit extended in the case of Prem Kumar Jha and others was extended on account of the directions of this Hon'ble Court, hence the same cannot be treated to be precedent.

Having heard the learned counsel for the parties and



having gone through the materials on record, I am of the opinion that the present case is squarely covered by a judgment dated 20.10.2016 passed by the learned Division Bench of this Court in L.P.A. No. 607 of 2012, paragraph no. 2 and 3 whereof are reproduced hereinbelow:-

“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 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 fact that the present case is squarely covered by the judgment of this Court dated 02.02.2011, passed in CWJC No. 7178 of 2010 as well as by the aforesaid judgment dated 20.10.2016 passed in L.P.A. No. 607 of 2012, the present writ petition is allowed and it is directed that the respondent authorities shall grant benefits of the past services rendered by the petitioners herein in the Work Charge



Establishment, and accordingly, grant benefits of A.C.P. and other consequential benefits.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	12.04.2018
Uploading Date	
Transmission Date	

