

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12833 of 2017

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Savita Devi W/o Late Banarsi Singh, Resident of Village- Mano English,
P.O.- Mano, P.S.- Suryagarha, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Department of Home, Bihar, Patna.
2. The District Magistrate, Lakhisarai.
3. The Circle Officer, Suryagarha, Lakhisarai.
4. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Surendra Kishore Thakur, Adv. Ms. Y. Madhuri, Adv.
For the Respondent/s	:	Mr.Pawan Kumar, AC to AG
For the Accountant General:	:	Mr. Rabindra Kr. Priyadashi, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 07-08-2019

The brief facts of the case are that the husband of the petitioner was appointed as a Dafadar vide order dated 1.1.1990 whereby and whereafter he was allowed to continue as such and it is the contention of the petitioner that salary was paid from Government Treasury to the husband of the petitioner late Banarsi Singh w.e.f. 1.4.1977 to 30.6.1993. In such view of the matter, it is submitted that since the husband of the petitioner has rendered more than 10 years of service, not only the husband of the petitioner was entitled for pension, but the petitioner is also entitled to family pension. However, the Secretary of Home (Police Department), Government of Bihar,



Patna by the impugned order dated 21.4.2017 has rejected the claim of the petitioner on the ground that the husband of the petitioner was declared to be 4th grade Government servant only on 1.1.1990 and since he had retired on 31.05.1993, no pension can be paid to the husband of the petitioner since he had worked as Government servant for merely three years and pension is admissible only after completion of minimum 10 years of service. The said order dated 21.4.2017 has been challenged in the present proceedings.

2. The learned counsel for the petitioner has relied upon a judgment rendered by a co-ordinate Bench of this Court dated 21.05.2010 passed in CWJC No. 14717 of 2009 (**Parmeshwar Paswan vs. The State of Bihar & Ors.**) to contend that the past services for the period 1.4.1977 onward are also required to be considered for the purposes of computation of the pension/ family pension amount in terms of Rule 59 of the Bihar Pension Rules. It would be relevant to reproduce paragraphs no. 8 to 14 of the aforesaid judgment rendered in the case of Parmeshwar Paswan (supra) herein below:-

8. Considering the rival submissions of the parties and their respective pleadings, it would appear that the basic facts with respect to appointment, allowing regular pay scale, gratuity, additional allowance and meeting the expenditure from general revenue of the State Government under the different head as indicated in Annexures -3 and 4. It is also not



in dispute that the petitioner also got declared as Class - IV employee of State Government vide Annexure -5. It would be appropriate to refer Rules 58 and 59 in connection with entitlement of pension under the Bihar Pension Rules which are quoted below :-

Rule :- 58 the services of a Government servant does not qualify for pension unless it conforms to the following three conditions :-

First - The Service must be under Government.

Second - the employment must be substantive and permanent.

Third - the service must be paid by Government.

These three conditions are fully explained in the following sub-sections.

Rule :- 59 The provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled.

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension.

(2) In individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension

9. On perusal of the aforesaid provision it would appear that Rule 58 prescribes three necessary conditions to be fulfilled for qualifying for pension by the Government servants. The conditions are that the service must be under Government, the employment must be substantive and permanent and the service must be paid by the government. The Rule 59 empowers the State Government declare even though the person claiming pension may not fulfill the above conditions no. 1 and 2 to direct that the service rendered by the Government servant shall count for pension considering



the individual cases with respect to any specific kind of service rendered in non-gazetted capacity having the paramount consideration for service of such individual cases that services must have been paid from the general revenue of the State Government.

10. The case of the petitioner that after initial appointment on the post of Chowkidar the regular pay scale revisions of pay scale as also the allowances and extending other benefits like payment of gratuity and exgratia amount to the legal representatives of the Chowkidar in case of his death even prior to 01.01.1990 were allowed. The expenditure on account of such payments were made from the public exchequer under the specific police heads mentioned in Annexure- 3 and 4 even before the petitioner alongwith other village Chowkidars were declared as Class - IV Employee. These facts are not in dispute.

11. The only reason for disallowing the benefit of pension is that in case, pension is allowed to the petitioner, the Government may be face more similar individual cases causing problem for the government in future. The stand is not justified in law in view of the provisions of rules 58 and 59 of the Bihar Pension Rules. Moreover, this court as per the order dated 29.04.2008 in C.W.J.C. No. 13634 of 2006 as contained in Annexure-6 specifically directed for consideration by "State Government" to consider the case of the petitioner in terms of Rule 59 of the Bihar Pension Rules for considering the service rendered by him in between 01.01.1977 to 01.01.1990. The impugned order does not indicate any such consideration.

12. Learned counsel for the State is not in a position to controvert the submissions of the petitioner that such considerations were made in the impugned order dated 18.06.2009 as contained in annexure- 8.

13. In the above circumstances and in view of the discussions made in the forgoing paragraphs, this court is unable



to uphold the decision as contained in impugned order dated 18.06.2009 (Annexure-8), accordingly, the same is quashed with direction that the State Government should take conscious decision for counting the previous service of the petitioner between 01.01.1977 to 01.01.1990 for qualifying service for pension in light of the relevant consideration required to be taken under Rule 58 and 59 of Bihar Pension Rules in the individual cases. Such decision be taken after considering the entire facts and circumstances of the case in respect of the petitioner as also directed by the Court on the previous writ application filed by the petitioner Vide Annexure -6 within a period of six months on receipt/production of certified copy of the present order

14. The writ application stands disposed of with the above observations/directions”.

3. Per contra, the learned counsel for the respondents has submitted that in light of the aforesaid judgment rendered in the case of Parmeshwar Paswan (supra), the respondents would definitely take a decision under Rules 58 and 59 of the Bihar Pension Rules.

4. Having regard to the facts and circumstances of the case, I deem it fit and proper to quash the order dated 21.4.2017 passed by the Secretary of Home (Police Department), Government of Bihar, Patna and remand the matter back to the State authorities to consider the case of the husband of the petitioner/ petitioner herein for grant of pension/ family pension and take a decision under Rules 58 and 59 of the Bihar Pension Rules.



5. In the facts and circumstances of the case, considering the aforesaid judgment rendered in the case of **Parmeshwar Paswan** (supra), the writ petition stands allowed to the aforesaid extent.

6. It is needless to state that the aforesaid decision to be taken by the concerned authority i.e. the Secretary of Home (Police Department), Government of Bihar, Patna shall be taken within a period of six months from the date of receipt/production of a copy of this order.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.08.2019
Transmission Date	N/A

