IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14275 of 2017

==

Umendra Kumar Singh Son of late Narsingh Singh, Resident of Village-Sarya, P.O.-Goh, P.S. Goh, District. Aurangabad

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Engineer-in-Chief-Cum-Special Secretary, Public Health Engineering Department, Bihar, Patna
4. The Chief Engineer, Department of Public Health Engineering (Mechanical) Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Gaya.
6. The Executive Engineer, Public Health Division, Aurangabad.
7. The Accountant General, A&E, Bihar, patna
8. The District Accounts Officer, Aurangabad.
9. The Treasury Officer, Sheikhpura.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Siyaram Pandey
For the Respondent/s	:	Mr.Arvind Ujjwal-SC4

==

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

6 09-07-2020 Heard both sides through Video Conferencing.

2. The petitioner in this writ petition seeks reliefs for issuance of a writ in the nature of mandamus or an appropriate writ/order or direction commanding the respondents to pay the retirement benefits to the petitioner including:

(i) Full amount of pension with revised scale.

(ii) Full amount of gratuity.

(iii) Full amount of leave encashment.

(iv) Amount of provident fund.

(v) Full amount of arrears after granting due promotions i.e. Ist A.C.P., 2nd A.C.P. and 3rd M.A.C.P. to the petitioner and

(v) Arrears of pension as per recommendation of 5th and 6th Pay Revision Commission and pay the retirement benefits to the petitioner in compliance of the order dated 07.08.2014 passed by the Full Bench of this Court vide L.P.A. No.701 of 2011.

3. The learned counsel of the petitioner submits that the petitioner was appointed as daily wages employee on muster role on the post of Khalasi in Public Health Division, Aurangabad in the year 1981. Executive Engineer, Public Health Division, Aurangabad absorbed the services of the petitioner under work charge establishment vide his office order no.55 dated 10.06.1988 as contained in Memo No.646 dated 10.06.1988(Annexure-1). The petitioner continuously worked with full satisfaction of the respondents-authorities on the post of Khalasi and the Chief Engineer, Mechanical, Public Health Engineering Department, Govt. of Bihar, Patna vide its Memo No.1124 dated 28.11.2006 wrote a letter to the Executive Engineer of Gaya, Aurangabad, Jehanabad and Nawada to regularize the daily wage employees. In pursuance of the order dated 28.11.2006, the Executive Engineer, Public Health

Engineering Department, Aurangabad vide its office order no.116 dated 01.12.2006 regularised the post of the petitioner. When the petitioner and other employees working under the work charge establishment were reverted to as daily wage employees w.e.f. 01.06.2002, many persons being aggrieved by order of reversion filed various writ petitions before this Court. One matter went upto Hon’ble Apex Court in Civil Appeal No.3486 of 2006(Dinbandhu Pandey vs. The State of Bihar and others) and the Hon’ble Apex Court held that the reversion was illegal and the employees were entitled to get the arrears treating them as work charge employees. Accordingly, the arrears of the petitioner was paid and petitioner remained working under work charge establishment till his regularization. According to the letter of Finance Department, as contained in Letter No.1393 dated 31.03.2004, the total length of service spent under work charge establishment shall be counted for the purpose of counting the qualifying service of an employee for grant of pension and gratuity and the employee sould be given the time bound promotion and A.C.P. by calculating the total length of service spent under work charge establishment. One Sheela Devi filed C.W.J.C. No.2246 of 2012 and the aforesaid writ petition was allowed with a direction to the respondents to ensure the family pension and other death-cum-retiral benefits including the gratuity, leave encashment, group insurance and G.P.F.. The State of Bihar preferred L.P.A. No.416 of 2013 against the order dated 04.09.2012 passed in C.W.J.C. No.2246 of 2012 and the aforesaid L.P.A. was dismissed on 15.05.2013. The State preferred S.L.P.(Civil) No.29497 of 2013 but the same was also dismissed. After dismissal of S.L.P., the State-respondent preferred Civil Review petition in L.P.A. No.416 of 2013 being Civil Review No.210 of 2014 which was also disposed by order dated 21.09.2015 by a Division Bench of this Court and it is made clear that in view of the Letter No.1393 dated 31.03.2004 the total length of service spent under work charge establishment shall be counted for the purpose of counting total length of service as qualifying service of an employee for calculating the pension and gratuity but the petitioner was not treated similarly and his pension was fixed only on the basis of the period spent by the petitioner after being regularized in regular service. Similarly all other retiral benefits were not paid to the petitioner after calculating the total length of service spent by the petitioner under work charge establishment.

4. The claim was contested by the State Government.

The State-respondents filed counter-affidavit stating that claim of the petitioner to calculate the entire period of the petitioner worked as work charge for the purpose of pension is not tenable. In the list of daily wager sent by Executive Engineer, Public Health Division, Aurangabad, the name of the petitioner was not mentioned. It is submitted that the petitioner was earlier working purely on temporary basis as daily wages employee and thereafter he was directed to work on the post of work charge. The post of Khalasi on which the petitioner was working under work charge establishment was not a sanctioned post, therefore, the period of service rendered by the petitioner on work charge post cannot be treated as the services rendered by the petitioner on substantive post in the permanent establishment. It is further submitted that very recently this Court in a Full Bench judgment in the case of Smt. Amrika Devi and others vs. The State of Bihar & Ors., 2019(4) PLJR 354 considered the different circulars including the circular of 2004 as well as 2013 and also considered the difference of opinion in two Division Bench judgments of this Court in State of Bihar and others vs. Sheela Devi and others (LPA No.416 of 2013) and Civil Review No.210 of 2014 on which the petitioner placed reliance and L.P.A. No.12674 of 2014 (Binod Kumar and others v. State of Bihar & Ors.). The Full Bench answered the reference and held that the period spent by an employee on work charge shall be calculated in proportionate manner as indicated therein with an object to make the service of an employee pensionable, if such employee has worked for less period on substantive post after being regularised in service than the period required for grant of pension and the entire period spent as work charge employee cannot be treated as work done on the substantive post and the entire period spent on work charge cannot be counted for the purpose of grant of pension treating him to work on substantive post.

5. The only question arises "whether the service rendered by the Government servant on daily wages or on the post of work charge establishment followed by regularization of service of such employee will be considered pensionable and the entire period rendered as work charge establishment shall be taken into consideration for grant of full pension or the period rendered by an employee on the post of work charge shall be calculated for the purpose of only qualifying service for pension?"

6. It is admitted fact that the petitioner was firstly appointed as daily wage employee on the muster role on the

post of Khalasi in Public Health Division, Aurangabad in the year 1981 and on the same post he was asked to work under work charge establishment vide Memo No.646 dated 10.06.1988. The service of the petitioner was regularized in pursuance of the order of the Chief Engineer, Mechanical, Public Health Engineering Department, Govt. of Bihar as contained in Memo No.1124 dated 28.11.2006 and he worked under work charge establishment till his retirement. The pension of the petitioner was fixed taking into consideration the work rendered by the petitioner on a substantive post of Khalasi and the period spent by the petitioner on the post of work charge as Khalasi was calculated for the purpose of qualifying pensionable service, accordingly, the other retiral benefits of the petitioner were paid. The petitioner being aggrieved by such calculation filed this writ petition for calculating the entire service rendered by the petitioner under work charge establishment. This question came up for consideration before a Full Bench of this Court in the case of State of Bihar and Anr.-respondents-appellants vs. Bhagwan Singh-petitioner-respondent in LPA No.701 of 2011 arising out of CWJC No.7228 of 2005 and a Full Bench of this Court in paragraph 14 of the judgment held as follows:

> **"Keeping in view the above provisions, we are of the opinion that the service rendered by the petitioner as daily wage Choukidar under the Executive Engineer, Tubewell Division, Gaya cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. Such service, although was followed by absorption on regular establishment, will not qualify for pension. Therefore, the service rendered by the petitioner, as daily wage employee from April 1973 to December 1978, was not a pensionable service or did not qualify for pension. On his retirement from service or his superannuation from service, he would be entitled to pension for the service rendered on a substantive post from 1st January, 1979 till the date he retired from service."**

7. Again, some differences of opinion arose between the two Division Bench Judgments Civil Review No.210 of 2014 arising out of L.P.A. No.416 of 2013 dated 21.09.2015(The State of Bihar vs. Sheela Devi and others) on which the petitioner placed reliance as well as L.P.A. No.12674 of 2017 dated 04.01.2018(Binod Kumar and others vs. State of Bihar and others) with regard to manner of calculation of length of service of an employee in his length of service of such employee after his being regularised in service on substantive post so that such employee may get minimum pension, if the employee has worked for less period on substantive post after being regularised in service than the period required to work on

substantive post for grant of pension and the question came up for consideration before a Full Bench of this Court in Smt. Amrika Devi & Ors. (in C.W.J.C. No.10063 of 2012), (Md. Parvez Quasim and others.(in C.W.J.C. No.10449 of 2017) and State of Bihar & Ors.(in L.P.A. No.1794 of 2018, 1796 of 2018). The Full Bench considered the circular No.10710 dated 17.10.2013 and different resolutions and circulars of the Finance Department as contained in Memo No.1344 dated 04.02.1949, order no.13327 dated 29.06.1971 and the order no.3425 dated 31.03.1976 and other circulars dealing with the service of work charge including the letter No.1393 dated 31.03.2004 and answered the reference in para 46 of the judgment as follows:

> **"46. The reference, thus, is answered in the following terms:**
>
> **(a) With respect to addition of the number of years of service rendered in a work-charged tenure to the service under regular establishment, for the purposes of making the service of such regular employees pensionable, there is practically no substantial difference in the pronouncements of the two Division Benches in the case of Sheela Devi(supra) and Binod Kumar(supra).**
>
> **(b) For the purposes of pension, only such period from the work-charged tenure would be added for making the service of an employee which has been regularized to qualify him for pension.**
>
> **(c) While adding such period of work-charged tenure, the modus would be of granting/counting one year for every five years of service rendered under work-charged**

establishment. If that also leaves some shortfall, then further number of years of work-charged tenure can be taken/added for making the service of the employee pensionable.

(d) For the purposes of giving benefit to an employee for promotion on the selection grade and time bound promotion, the entire period of service rendered as work-charged employee can be counted.

(e) The rules and Circular of 2013 are valid as has been held in Binod Kumar(supra).

(f) The Rules and Circular of 2013 are applicable to such work-charged employees who have been appointed after 22.10.1984 and prior to 11.12.1990."

8. From the facts aforesaid and the law laid down by the two Full Bench judgments of this Court, it is crystal clear that the services rendered by the petitioner on the post of work charge following his regularization shall be taken into consideration for the purpose of calculating the service of the petitioner as pensionable after calculating the same in 5:1 ratio and the entire period of service rendered by the petitioner as work charge shall not be counted for the purpose of granting full pension. The entire service rendered by the petitioner on the post of work charge could not be counted for the purpose of qualified service but it only be counted to the extent of for the purpose of making it pensionable on the principle of 5:1 ratio as stated in the circular of those employees for whom the cut off date has been extended. Thus, I find that the petitioner is not entitled to get full pension and other retiral benefits after

calculating the entire period of service rendered by him on the post of work charge for grant of pensionary benefits. Accordingly, I find no merit in this writ petition and the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

U			