

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1575 of 2018

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Lakhindra Sah, Son of Ganesh Sah, Resident of Village-Dighra Rampur Sah,
P.S. Muzaffarpur Sadar, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
4. The Deputy Secretary, Rural Works Department, Government of Bihar, Patna.
5. The Chief Engineer, Rural Works Department, Bihar, Patna.
6. The Superintending Engineer, Rural Works Department, Work Circle, Muzaffarpur.
7. The Executive Engineer, Rural Works Department, Work Division, Belsand Sitamarhi, Muzaffarpur.
8. The Treasury Officer, Muzaffarpur, District-Muzaffarpur.
9. The Accountant General, Bihar, Patna.
10. The Assistant Accountant General/Senior Accounts Officer, Officer of the Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Vijay Kumar Singh, Advocate
For the Respondent/s	: Mr. Ajay, GA-5
For the Accountant General	: Mr. Raj Nandan Prasad, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 01-06-2020

The matter has been heard *via* video conferencing due to
lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Vijay Kumar Singh, learned counsel for the
petitioner; Mr. Ajay, learned GA 5 for the State and Mr. Raj
Nandan Prasad, learned counsel for the Accountant General.



3. The petitioner has moved the Court for the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to fix/revise the pensionary benefits of the petitioner and make payment of its consequential monetary benefits with penal interest, counting the services rendered by the petitioner since the initial date of his appointment in the work charge establishment as Roller Khalasi on 21.01.1981 till the date of his retirement i.e., 30.06.2016 as regular qualifying service i.e. 35 years 5 months by modifying the pension intimation memo and D.C.R. gratuity payment order dated 14.09.2016 issued by the Respondent no. 10 on the ground that this Hon’ble Court held that the petitioner was and still are regular employees of the State and accordingly, entitle to all benefits of such employment including their status but the Respondents had illegally and arbitrarily fixed the minimum pension of the petitioner.*

*(II) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to pay the other retiral dues like earned leave etc. treating him as regular employee of the State since the date of his initial appointment in work charge establishment.*

(III) For a declaration that since the petitioner was appointed as a Roller Khalasi under work charge establishment on 21.01.1981 and subsequently as Roller Driver on 18.12.1986 in the Respondent department and he continued on the said post till the date of his retirement and subsequently the services of the petitioner was absorbed in regular establishment under circular of the State Government contained in Finance Department memo no. 1344 dated 04.02.1949 (Service Condition Rules, 1949) pursuant to the direction of this Hon’ble Court, therefore, the petitioner is entitled to get his pensionary benefits, treating him as regular employee of the department



since the date of his initial appointment as work charge employee.

(IV) For issuance of any other appropriate writ /writs, order/orders direction /directions for which the writ petitioner would be entitled under the facts and circumstances of the case.”

4. Basically, the petitioner is aggrieved by non-counting of his entire service rendered under the work-charge establishment and restricting the same only to 10 years, which is the minimum qualifying period.

5. Learned counsel for the petitioner submitted that he was appointed in the year 1981 and continued in service till his superannuation in the year 2016. It was submitted that because of not being regularized, he had moved this Court and the learned Single Judge had allowed the writ application observing that the petitioner was entitled to similar treatment of regularization as had been given to some other similarly situated employees in whose cases also there were judicial orders for their regularization. It was submitted that challenge to the same by the State in LPA was rejected and further appeal before the Hon'ble Supreme Court by the State also did not succeed. Learned counsel submitted that his service was regularized in the year 2014, but when it came to making payment of retiral dues, the entire service period was not counted and restricted only to 10 years on the basis of the



policy/circular of the State Government in the Department of Finance of the year 2013, which stipulates that the work-charge period would be counted only for meeting the shortfall in the minimum qualifying period of service for grant of pensionary benefits. Learned counsel submitted that when the same was not done, he has filed the present writ application. Learned counsel submitted that in the case of **Netram Sahu vs. State of Chhattisgarh** (CA No. 1254 of 2018) by order dated 23.03.2018, the Hon'ble Supreme Court has held that the entire service period in the work charge establishment has to be counted for payment of pensionary benefits. He submitted that even in the case of **Habib Khan v. State of Uttarakhand**, since reported as **(2019) 10 SCC 542**, the Hon'ble Supreme Court has taken a similar view.

6. Learned counsel for the State submitted that the petitioner is not entitled to the relief for the reason that a Full Bench of this Court in **Smt. Amrika Devi vs. State of Bihar**, since reported as **2019(4) PLJR 354**, by judgment dated 02.09.2019, has held that the entire period of work charge establishment shall not be counted for the purposes of grant of pensionary benefits to an employee and the same shall be in terms of the aforesaid 2013 Circular of the State Government in the Department of Finance, which stipulates that only the shortfall in



the qualifying period would be counted from the work charge period which, in the case of the petitioner is 10 years, being the minimum qualifying period of regular service required for grant of pensionary benefits. Learned counsel submitted that the petitioner having been regularized in terms of the said circular of the State Government of the year 2013 had filed a contempt petition in which he had canvassed the point that his entire period of service in the work-charge should be counted for pensionary benefits, but a co-ordinate Bench while considering the contempt application had clearly held that this issue was not the subject matter in the writ petition filed by the petitioner which was restricted only to regularization of his service and the same having been granted, claim for counting of the entire work charge period for pensionary benefits, the same was a fresh cause of action. It was submitted that once the Full Bench of this Court in the case of **Smt. Amrika Devi** (*supra*) has upheld the provision of the 2013 circular relating to counting of work-charge service period of employees for the purposes of reckoning pensionary benefits to them by restricting it only for the purposes of meeting the shortfall in the qualifying period, the same having been done in the case of the petitioner, the writ petition does not have any merit and deserves to be dismissed. Learned counsel submitted that though challenge to the decision of



the Full Bench is pending before the Hon'ble Supreme Court, but no interim order has been passed.

7. Having considered the rival contentions, the Court finds that the regularization of the service of the petitioner in terms of the earlier orders of the Court was not to the effect that his entire service period would be counted and the same having been paid by the authorities in terms of the 2013 policy/circular of the State Government, not being the subject matter of the previous litigation, as has also been clarified by a co-ordinate Bench in the contempt petition filed by the petitioner himself, such cause of action rightly being a fresh cause of action, in the present circumstances, when a Full Bench of this Court has upheld such provision, and the authorities having granted the benefit to the petitioner in thereof, as has rightly been submitted by learned counsel for the State, no relief can be granted to the petitioner in the present writ application, especially till the time the order of the Full Bench of this Court holds the field and is not interfered by the Hon'ble Supreme Court.

8. In view thereof, the writ petition stands disposed off observing that depending on the decision of the Hon'ble Supreme Court in the case filed challenging the Full Bench decision of this Court in **Smt. Amrika Devi** (supra), the petitioner would be at



liberty to take steps and move before the appropriate forum, in
accordance with law, in future, as and when the situation arises.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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