

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.511 of 2018

In
Civil Writ Jurisdiction Case No.4712 of 2016

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Satyendra Prasad son of Late Nagendra Nath Verma resident of B- 111,
Housing Colony, Kankarbagh, PO - Lohiya Nagar, PS - Kankarbagh, Patna -
800020.

... .. Appellant/s

Versus

1. The Patna University, Through its Vice Chancellor.
2. The Vice Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Budget and Accounts Officer, Patna University, Patna.
5. The Principal, Magadh Mahila College, North of Gandhi Maidan, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Akashdeep, Adv.
		Mr. Shyameshwar Kr. Singh, Adv.
For the Respondent/s	:	Mr. Nadim Seraj, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 28-02-2020

In the present appeal, the issue is with regard to
entitlement of pension to the appellant.

Learned Single Judge has taken a view that as he has not
completed 10 years of service on substantive post, he is not
entitled to the benefit of pension.

The present appellant was initially appointed on
30.7.1986 on daily wages and continued to hold the post of Clerk
in B.N. College, the constituent college of the Patna University. As
he remained for years together on temporary basis, he approached



this Court for his regularization in C.W.J.C. No. 8922 of 1988 (Annexure-6 of the supplementary affidavit) wherein this Court, placing reliance on the judgment passed in the case of Braj Kishore Singh Vs. The State & Ors. reported in 1997 (1) PLJR 509, directed for consideration for regularization in service. In pursuance thereof, the Principal of the B.N. College vide letter dated 13.2.2001 has given the details of the fact and requested to regularize the service of three persons, namely, Subodh Kumar Gupta, Satendra Prasad and Ajit Kumar Sharma and, ultimately, the petitioner along with others were regularized in service on 29.1.2004 (Annexure-5) by which altogether 21 in Grade-3 and 19 in Grade-4 having been regularized in service. He continued to discharge the duty unblemished and superannuated from service on 30.9.2003. He has filed an application for his pension but, the authority refused to grant the same on the plea that his service is 4 months 1 day short of 10 years as the 10 years is the minimum prerequisite qualification for a person to be entitled to the minimum pension which he is lacking.

The question has been raised by the appellant that he has altogether discharged the service for 35 years, shortage of just 4 months and 1 day of 10 years in permanent service cannot be a basis to deprive the appellant the benefit of pension. Further, he



has submitted that the learned Single Judge has wrongly placed reliance on Clause 14 of the Statute for grant of retiral benefit to the employees of the Bihar, Ranchi, Bhagalpur, Magadh, L. N. Mithila, K.S.D. Sanskrit University as he has submitted that the Patna University has its own Statute, will hold the field. Further he has submitted that as there is no qualifying service, so the rider of 10 years will not be a condition precedent to deprive him the benefit of pensionary benefit. He has placed reliance on different provisions of the Statute meant for the Patna University as well as submitted that even presuming that the Bihar Pension Rule applies, that itself prescribes that the period he has discharged on temporary basis or as a work-charge will be included for the purpose of grant of pension whereas learned counsel for the University has submitted that of-course the statutory provision is meant for other University than to the Patna University but, Clause 24 of the Statute provides that in the event, the Rule does not deal with the subject matter, the provision of Bihar Pension Rule will apply and, as per Bihar Pension Rule, Rule 58 mentions three condition, firstly, the person must be a government servant, secondly, the employment must be substantive or permanent and thirdly, the payment must be paid by the government. In the case of present appellant, he has not discharged 10 years of service in



the University on substantive basis, so, he will not be entitled to the benefit of minimum pension as the period required for the same under the Bihar Pension Rule is 10 years and, as such, not entitled to the same.

In reply, learned counsel for the appellant has submitted that as there is a provision of liberalized pension, so, the benefit of liberalized pension should be given to him and shortage of 4 months and 1 days in 10 years would hardly be a hurdle in view of Rule 6 of the Liberalized Pension Rule.

Having considered the rival conditions of the parties, on deep consideration, it appears that the learned Single Judge has applied Clause 14(i) of the Statute which is not applicable to the Patna University rather it is applicable to other University situated in the State of Bihar and, on perusal of the statutory provision meant for the Patna University, it does not prescribe the qualifying year of service making employee entitled for the pension but, Clause 24 of the Statute prescribes as follows:-

“24. Subject to the provisions of the Retirement Benefit Statutes-

(a) the preceding rules will stand amended in event of any change(s) to the corresponding provision(s) in the Bihar Pension Rules,

(b) the Bihar Pension Rules, will apply, as amended from time to time, in all matters not covered by



the preceding Rules so far as procedure regarding grant/payment of pension(s)/gratuity is concerned.”

On perusal of Clause 24, it appears the Bihar Pension Rule applies in uncovered area of the Statute. In such circumstances, Bihar Pension Rule would apply dealing with requisites for entitlement of pension.

In that view of the matter, Rule 58 of the Bihar Pension Rules, 1950 would apply mutatis and mutandis. Accordingly, in place of Government, it will be read as University. The three conditions have been made essential. There is no doubt that the appellant has discharged the duty for 4 months 1 day is short of 10 years held the post of University, substantive and permanent and paid from the fund of the University. So, the question would arise that if a person is less than 10 years, straightway, his claim for pension should be rejected or there is a provision in the Bihar Pension Rule dealing with such hard cases. The answer is in affirmative. Rule 59 of the Bihar Pension Rules deals with grant of exemption and relaxation which reads as follows:-

“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.”

It appears from the provision of Rule 59 that the provincial Government may however in the case of salary paid from general revenue even though either or both condition 1 & 2 are not fulfilled, may declare any specific kind of service rendered in a non-gazetted capacity would qualify for the pension. So, here the government has to make declaration of service and specify class. Clause-2 deals with individual cases wherein the Government can individually may fix condition, may relax the condition and direct the service rendered by the government servant would be entitled for pension. In order to give complete answer, it would be relevant to deal with Rule 106 of the Bihar Pension Rule reads as follows:-

“106. Upon any conditions which it may think fit to impose the authority competent to sanction the pension of a Government servant may condone a deficiency of three months in his qualifying service. Condonation of deficiencies beyond three months will require the orders of the Provincial Government:

Provided that, without the sanction of the Provincial Government condonation should not be allowed. -

(i) When the pension, without such condonation, would be Rs. 50 or more; and



(ii) when the Government servant is retiring after being retained in service beyond the age of 55.

Condonation of deficiencies beyond three months will in all cases require the sanction of the Provincial Government.

Note. - The following principles should be observed in considering cases of condition of deficiencies in service under this rule -

(a) Condonation of short periods will ordinarily be allowed where a Government servant is compelled to retire on invalid pension or when condonation of a short deficiency is necessary to enable a Government servant to draw pension instead of gratuity.

(b) Condonation of short periods should also ordinarily be allowed where there has been a fairly long period of continuous temporary or other service (such as service in a district board, etc., which does not qualify for pension)."

This provision enables the State Government or the employer to condone the deficiency of shortage of period. It also deals with the situation of shortage of three months, the power of condonation has been given to the authority competent to sanction the pension whereas Sub-Rule a & b which postulates that the condonation of short period will be allowed where the employee is compelled to retire on invalid pension or where the condonation of short deficiency is necessary to enable the government servant to draw pension instead of gratuity. Another part of Sub-Rule b which prescribes the condonation of short period should also



ordinarily be allowed where there is fairly long period of continuous, temporary or other services. So, from Rule 106, it makes it clear that if a condonation is to be for three months, the power lies with the authority competent to sanction the pension and if it is more than three months, certainly, the power goes to the State Government.

One of the argument has been advanced by the learned counsel for the appellant that where ever the word Government has been used should be construed mutatis mutandis as Chancellor of the University which cannot be accepted as the Chancellor has been created under the statutory provision whereas the power has been given to the sovereign i.e. the State Government. Here the provincial government means the State Government will have the power to condone the delay beyond three months and that too it has been said that if the person has fairly worked for a long period, the State Government would ordinarily allow such condonation. As the appellant, in totality, has discharged the serve for 35 years, out of that he has discharged the duty as Class-3 on substantive basis. Only four months 1 day short of 10 years. In that view of the matter, let the appellant should file an application through Registrar to the Vice-Chancellor, in turn, the Registrar would send the same to the State Government i.e. Additional Chief Secretary,



Education Department, in view of 106 of the Bihar Pension Rule as explained herein above, it is expected that the Government would condone the deficiency considering the long period of service as also considering the shortage of period of 4 months and 1 day.

Accordingly, this Court direct the Patna University on receipt of the application filed by the appellant will send the same within one month from the date of receipt of the application and on receipt of the same, the Additional Principal Secretary, Education Department will deal with the matter within a period of two months and take a decision accordingly. The decision will be taken in accordance with law as explained herein above.

With the aforementioned observation and direction, this appeal is disposed of.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
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