

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 86 of 2019

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Ram Ekbal Mahto S/o Late Kedar Mahto Resident of Barwat Pasrain, Ward
No. 09 P.O.-Barwat Pasrain, P.S.-Bettiah Muffassil, District-West
Champaran.845438.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary, Water Resources Department,
Patna, Bihar.
2. The Engineer-in Chief Cum Special Secretary, Water Resources Department,
Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Balmiki Nagar, West
Champaran, Bihar.
4. The Superintending Engineer, Water Resources Department, Tirhut Canal
Division, Bettiah, West Champaran, Bihar.
5. The Executive Engineer, Water Resources Department, Tirhut Canal
Division No.1, Bettiah, West Champaran, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harendra Kumar Tiwary, Adv.

For the Respondent/s : Mr. Harish Kumar, GP-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 09-07-2021

The present writ petition has been filed for
considering the case of the petitioner as a special
case for grant of pensionary benefits taking into
account his long tenure as a daily wage worker
from 02.04.1981 to 30.09.1996.



2. The learned counsel for the petitioner has submitted that the petitioner had worked as daily wage pump operator from 02.04.1981 to 30.09.1996, however, in the year 1996, he was removed from his services as a daily wager, whereafter he along with other similarly situated employees had filed a writ petition bearing CWJC No. 11717 of 1995 for regularization of their services, which was disposed of by a coordinate Bench of this Court vide order dated 21.11.1996 with certain observations, however, subsequently, the respondents had rejected the claim of the petitioner and others by an order dated 06.07.2005. Nonetheless, subsequently, the petitioner along with others was appointed in the Water Resources Department, Balmiki Nagar, by an office order dated 12.09.2009 issued by the Chief Engineer, Water Resources Department, Balmiki Nagar, whereupon the petitioner had joined his services on 15.09.2009 and ultimately, he superannuated from his services on 31.12.2017.

3. The learned counsel for the petitioner has



further submitted that since the petitioner had not completed 10 years service, he has been denied pension, hence, it is prayed that a sympathetic view be taken for the purposes of grant of pensionary benefits in view of his long tenure as a daily wager from the year 1981 to the year 1996.

4. Per contra, the learned counsel for the Respondent-State, Sri Harish Kumar (GP-8), has submitted that the petitioner had joined the regular establishment on 15.09.2009 and as per the letter of the Finance Department dated 31.08.2005, an employee, who has joined the services of the Government of Bihar on or after 01.09.2005, shall be governed by the new pension scheme, 2005 and would not be covered by the Bihar Pension Rules, 1950. It is thus submitted that the entitlements under the new pension scheme, 2005, qua the petitioner herein, has already been processed and the due amount has already been paid to him. The learned counsel for the respondent-State has also referred to the letter of appointment of the petitioner dated 12.09.2009,



more particularly Clauses 2 and 10 thereof, which stipulates that firstly, the period pertaining to the petitioner having worked as a daily wager in the past shall not be considered as service rendered under the State Government for any purposes and secondly, the petitioner would be amenable to the new pension scheme, notified by the State Government on 01.09.2005. The learned counsel for the Respondent-State has further referred to the resolution of the Finance Department dated 31.08.2005, which prescribes that those employees, who have been appointed on or after 01.09.2005, shall neither be covered by the provisions of the Bihar Pension Rules, 1950 nor by the previously existing General Provident Fund Scheme. Lastly, the learned counsel for the Respondent-State has relied on a judgment rendered by a full Bench of this Court in the case of ***The State of Bihar & Another vs. Bhagwan Singh (since dead)***, reported in ***2014 (4) PLJR 229***, paragraph no. 14 whereof is reproduced herein below:-



“14. 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.”

5. I have heard the learned counsel for the parties and gone through the materials on record. Considering the fact that as per the appointment letter of the petitioner dated 12.09.2009 as also according to the resolution of the Finance Department dated 31.08.2005, the provisions of



the Bihar Pension Rules, 1950 are not applicable to the petitioner and the petitioner is amenable to the new pension scheme, 2005, no relief can be granted to the petitioner inasmuch as firstly, his services are not pensionable and secondly, his past services rendered as a daily wage employee cannot be counted as a qualifying period for the purposes of grant of pension in view of the law laid down by the learned Full Bench of this Court in the case of **Bhagwan Singh** (supra) wherein it has been held that the service rendered by a daily wage employee is not a pensionable service and does not qualify for pension.

6. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	01.07.2021
Uploading Date	12.07.2021
Transmission Date	NA

