

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15633 of 2019

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Yugal Kishore Upadhyay Son of Late Ram Prasad Upadhyay Resident of
Village and P.O.- Korawan, Via- Naubatpur, P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. Principal Secretary, Water Resources Department, Government of Bihar, Sinchai Bhawan, Patna.
3. Principal Secretary, Finance Department, Government of Bihar, Old Secretariat, Patna.
4. The Joint Secretary to the Government of Bihar, Water Resources Department, Sinchai Bhawan, Patna.
5. Under Secretary to the Govt. of Bihar, Water Resources Department, Sinchai Bhawan, Patna.
6. Chief Engineer, Central Design Research and Quality Control, Water Resources Department, Anishabad, Patna.
7. Superintending Engineer, Flood Control and Quality Control and Drainage Circle, Anisabad, Patna.
8. Executive Engineer, Quality Control (Flood Control and Drainage Division) Anishabad, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Sinha, Sr. Advocate Mr. Ajit Kumar Sinha
For the Respondent/s	:	Mr.Vikash Kumar (SC-11) Mr. Rewati Kant Raman, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

23 27-10-2021 Heard learned counsel for the parties.

2. The petitioner was engaged on daily wages in the Water Resources Department as steno-typist as asserted in the writ petition. He was granted consolidated pay of Rs. 820/- per month with effect from 28.07.1990. He had approached this



Court by filing a writ petition, giving rise to CWJC No. 8487 of 1999, seeking direction for regularization of his service and for payment of minimum time scale of pay as was being paid to other similarly situated employees. The said writ petition was disposed of by an order dated 03.12.2004 (Annexure P/1) holding that since other similarly situated employees were being paid time scale, the petitioner should also be entitled to the same benefits. On the point of petitioner's claim for regularization, this Court passed the following orders:-

“As far as the second aspect regarding regularization of service of the petitioner is concerned, the stand of the State by filing a counter affidavit sworn on 5.5.2000 is that there is no vacant post for consideration of the petitioner's claim for regularization. However, the contention on behalf of the petitioner is that in view of the policy decision of the State that the service of all such persons working on daily wages prior to 1.8.1985 shall be regularized and as the petitioner is covered under the same, his case was required to be considered for regularization. It has further been contended that not only the policy decision of the State but also upto-date vacancy has been brought on record by him by Annexure-21 series which go to show that at least four posts of steno-



typist are vacant in the Division.

This Court taking into consideration the policy decision of the State and upto-date position of vacancy, which has been brought on record and are the documents of the State itself given by the respective Executive Engineers, directs the Respondent No.2 to look into this aspect of the matter and in view of the policy decision of the State and the vacancy which has been brought on record issue specific direction within a period of three months from the date of receipt/production of a copy of this order.”

3. The petitioner was allowed minimum time scale of pay with effect from 21.09.1995, which is not in dispute. Complaining non-compliance of this Court's order dated 03.12.2004 in respect of regularization of his service, the petitioner had approached this Court by filing contempt application, giving rise to MJC No. 816 of 2005.

4. In the show cause reply filed on behalf of the respondents in the said MJC application, the respondents are said to have informed this Court that the petitioner's services have been regularized. It appears that by an order dated 24.01.2007 (Annexure P/2) the petitioner's service was regularized.



5. The petitioner attained the age of superannuation on 30.06.2011.

6. Though this writ application has been filed seeking direction for grant of Assured Career Progression (ACP), Modified Assured Career Progression (MACP) and pensionary benefits by treating petitioner's continuous service from the date of his initial engagement on daily wage basis, the petitioner has, however, confined his prayer to the extent it relates to sanction and payment of pension, gratuity and cash equivalent to unutilized earned leave.

7. Mr. Sinha, learned senior counsel, appearing on behalf of the petitioner has argued that the services rendered by the petitioner prior to his regularization may be treated to be regular for determination of pensionable service. He has further submitted that admittedly the petitioner served the department for a long period, he should not be denied pensionary benefits. According to him, there being delay on the part of the respondents in taking a decision on the question of petitioner's regularization, the post retiral benefits in accordance with the pension rules should be extended to him.

8. In response to a query made by this Court as to why the petitioner had approached this Court eight years after



he attained the age of superannuation by filing the present writ application, Mr. Sinha submits that the petitioner was pursuing his remedy before the Department, and when his claim was finally rejected through letter dated 29.03.2019 (Annexure P/11), he has approached this Court.

9. Learned counsel appearing on behalf of the State of Bihar has submitted that the petitioner's service has been regularized with effect from 29.10.2007, when new pension scheme has come into effect. He submits that the petitioner's appointment before the date with effect from which his service was regularized cannot be said to be on substantive basis and accordingly he cannot be held entitled to pensionary benefits under the Bihar Pension Rules, 1956. He has further submitted that petitioner had admittedly not completed ten years of service to claim entitlement of pension under the old Pension Rules.

10. Mr. Sinha has placed reliance on a decision of this Court rendered on 31.08.2021 in CWJC No.14818 of 2015 (Basant Singh and Ors. Vs. State of Bihar and Ors.) to contend that the entire service rendered by the petitioner on daily wages basis may not be taken into account for determination of pensionable service, but at least taking into account the facts and circumstances, qualifying pensionary service to the extent



of ten years may be directed to be considered.

11. On careful examination of the pleadings on record and the submissions made on behalf of the petitioner, I am of the view that the relief sought for in the present writ application cannot be granted.

12. Learned counsel for the State of Bihar has rightly relied upon a coordinate Bench decision of this Court dated 28.11.2016 passed in CWJC No. 528 of 2015 (Girja Nandan Sharma Vs. State of Bihar and Ors.), wherein relying on Full Bench decision of this Court in case of State of Bihar and Anr. Vs. Bhagwan Singh reported in 2014(4) PLJR 229, it has been clearly held that at the petitioner's employment was permanent in regular establishment on 12.09.2009, the service rendered by him prior to that period could not qualify for pension considering the facts and circumstances of the case.

13. Considering the facts and circumstances of the case, I do not find any merit in this application, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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