

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14676 of 2019

Dr. Syed Shaukat Hussain S/o- Late S. Moinul Hussain R/o- Vill.- Babunia
Road New Police Chawki No- 2, P.S. and District- Siwan.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Animal Husbandry and Fisheries Department, Govt. of Bihar, Patna.
3. The Director, Animal Husbandry and Fisheries Department, Govt. of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rajeev Kumar Singh
For the Respondent s	:	Mr.Md. Khurshid Alam, AAG-12
		Ms. Nutan Sahay, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-09-2021

Heard Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioner and Ms. Nutan Sahay, learned A.C. to AAG-12.

2. Facts of the case are not at all in dispute. The petitioner was appointed as Touring Veterinary Officer on *ad hoc* basis on 01.09.1987 along with 56 others, including one Vikash Kumar Srivastava (since deceased), by virtue of a notification dated 28.08.1987 issued by the Animal Husbandry and Fisheries Department, Government of Bihar, for a term of three years. By a subsequent order issued by the Department, his service along with



others including late Vikash Kumar Srivastava was extended for a further period of three months awaiting approval of recommendation from Bihar Public Service Commission for his regular appointment. His service and that of others including late Vikash Kumar Srivastava was subsequently extended on ad hoc basis from time to time. The last such extension was granted to them by a notification dated 17.01.1989 for a period, up to 31.12.1989.

3. Prior to expiry of the aforesaid period, by a notification issued by the Animal Husbandry and Fisheries Department, Government of Bihar, dated 24.10.1989 (Annexure-4), the petitioner and others, who were appointed initially on *ad hoc* basis, were appointed on permanent basis pursuant to a recommendation made by the Bihar Public Service Commission in this regard. The petitioner has attained the age of superannuation and has retired.

4. The petitioner claims in this writ application that the period during which he had served the department on *ad hoc* basis from 01.09.1987 to 16.11.1989 should have been counted for the purpose of grant of ACP, seniority and pensionary benefits.

5. Admittedly, said Vikash Kumar Srivastava had approached this Court by filing a writ petition giving rise to



C.W.J.C. No. 15828 of 2006 raising claim that the period of service rendered by him on *ad hoc* basis should be computed for the purpose of determination of grant of ACP/MACP and post retiral benefits. During the pendency of the writ petition, he died and consequently came to be substituted by his heirs/legal representatives. The said C.W.J.C. No. 15828 of 2006 was allowed by a coordinate Bench of this Court by an order dated 17.09.2013 in following terms :

“..... The temporary appointment was made awaiting recommendation from B.P.S.C. It was extended from time to time awaiting recommendation of B.P.S.C. Once recommendation was received, it was made permanent and, thus, there was a continuity intended. That being so, the service tenure of petitioner would be counted from the date of initial temporary appointment. There being no break whatsoever in regard to the initial period of the year 1989, which is sought to be covered by typographical mistake. All I can say is that the Court having been granted status quo, in the period of status quo petitioner was permanently appointed that period would also be treated as period in service as has been duly certified by the Regional Director vide Annexure-11. That being so, the two years period prior to



petitioner's appointment in regular basis accordingly, grant of A.C.P. has to be recalculated. As petitioner died in harness and his death-cum-retiral dues including gratuity has to be counted taking into account the period aforesaid. As the writ petition is now being pursued by his widow wife, it is expected that the Department would take a sympathetic view of the matter and work out the consequences of this judgment at an early date but not later than two months from the date of production of a copy of this order before the Director, Animal Husbandry, Government of Bihar, Patna."

6. Aggrieved by the decision of the coordinate Bench of this Court, the State of Bihar had preferred an appeal under the Letters Patent of this Court giving rise to L.P.A. No. 1422 of 2014. The Division Bench, upon examining in detail all the factual aspects, including an apparent typographical error in the letter of extension of service on *ad hoc* basis dated 17.01.1989, held in paragraph 9 and 10 as under : -

"9. On a bare reading of the notification, dated 17.01.1989, what becomes transparent is that notification was issued on 17.01.1989 and if the contents of the notification, dated 17.01.1989, are



literally interpreted, it would appear as if the Government, by the notification, dated 17.01.1989, had extended the services of Dr. Vikash Kumar Srivastava (since deceased) from 27.06.1988 to 31.12.1989, 31.12.1988 being the last cut off date making it clear that thereafter, no further extension would be allowed; whereas the contents of the notification, if read carefully, would clearly disclose that the notification is prospective in nature and, therefore, the learned single Judge was wholly correct in holding that the date '31.12.1988' as the cut off date has been incorrectly typed and what was intended by the notification, dated 17.01.1989, was that the cut off date would be 31.12.1989 or else, the notification carried no meaning. We completely agree with the view so taken by the learned single Judge and see no reason to construe the notification in any other manner. The construction of the notification, dated 17.01.1989, by the learned single Judge, carries the spirit of the notification and it is in this light that one was required to read the notification or else, reading of the notification would be wholly mechanical; whereas no judicial function can be performed mechanically.



10. Coupled with the above, we also find that the cut off date of 31.12.1988 was prescribed awaiting approval of the Commission and as the notification, dated 17.01.1989, had the effect, virtually, of a letter terminating the services of the deceased writ petitioner and others, they all filed the writ petition, which, as already indicated above, gave rise to CWJC No. 1305 of 1989 and by order, dated 02.02.1989, status quo was directed to be maintained and, eventually, on the concurrence received, on 24.10.1989, from the Commission, the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was formally appointed to the cadre of Bihar Animal Husbandry Services Class-II with effect from assumption of the charge of his services. The writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was, thus, appointed, in accordance with law, in the cadre of Bihar Animal Husbandry Services Class-II.”

7. On the question of reckoning the period during which said late Vikash Kumar Srivastava had worked on *ad hoc* basis, the Division Bench held in paragraph 12 to 14 as under : -

“12. The only question, therefore, is as to whether the period of service, which



the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), had rendered from 10.09.1987 and 24.10.1989, can be counted for the purpose of reckoning this period to grant Assured Career Progression as well as death –cum- retiral dues. Since this question needs to be answered in the light of the provisions of Rule 63 of Bihar Pension Rules, 1950, Rule 63 is quoted below.

“63. A Government servant transferred from a temporary to a permanent appointment can count his service, in the temporary post, if though at first created experimentally or temporarily, it eventually becomes permanent.”

13. On cautious reading of Rule 63 of Bihar Pension Rules, 1950, it becomes clear that a Government servant, when transferred from a temporary to a permanent appointment, the services rendered by him, on temporary appointment, will be counted as the services rendered by him on permanent appointment.

14. In the case at hand, the appointment of the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was in the scale of the Veterinary Doctor and, hence, though the post was not formally



created, the fact remains that the nature of his appointment showed that the appointment was against a temporary post; more so, when it has nowhere been so contended in their counter affidavit, by the respondents. Far from this, what was contended by the appellants in the counter affidavit was that the appointment of the writ petitioner, Dr. Vikash Kumar Srivastava (since deceased), was on ad hoc basis till 01.12.1988. The ad hoc appointment made pending approval of the Commission cannot be said to be an appointment against non-existent post.”

8. After having held so, the Division bench declined to interfere with the order passed by the coordinate Bench dated 17.09.2013 in C.W.J.C. No. 15828 of 2006.

9. Mr. Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioner has submitted that since his case is identically situated with that of Vikash Kumar Srivastava, he should be allowed the same benefits. He has argued that after decision was rendered in case of Vikash Kumar Srivastava in the writ proceeding, the petitioner had filed a representation before the competent authority for grant of same relief as was allowed by this Court in case of late Vikash Kumar Srivastava, but no action was



taken on his representation. He has relied on a Full Bench decision of this Court in case of *Amresh Kumar vs. The State of Bihar and Others*, reported in **2018(2) PLJR 929**, wherein taking note of litigation policy of the State Government, it has been categorically observed that similarly situated persons should be given similar treatment even if they do not approach this Court, if in identical situation matter is decided by this Court in a particular manner.

10. Ms. Nutan Sahay, learned A.C. to AAG-12 appearing on behalf of the State of Bihar has resisted the petitioner's claim mainly on the ground that the petitioner has approached this Court belatedly and he being a fence sitter, cannot be allowed the same relief, which was granted to the heirs of Vikash Kumar Srivastava, that too on sympathetic considerations. She has placed reliance on Supreme Court's decision in case of *State of U.P. v. Arvind Kumar Srivastava*, reported in **(2015) 1 SCC 347**, and has submitted that those, who want to get the benefit of a judgment, are required to satisfy that their petition does not suffer either from laches or delay or acquiescence. She has contended that the petitioner has not been able to satisfy this Court that he was vigilant and diligent in raising his claim for grant of benefit as was granted in case of late Vikash Kumar Srivastava.



11. After having gone through the pleadings on record and the submissions made on behalf of the parties, it is manifest that there is absolutely no dispute about the fact that the petitioner's case and that of said late Vikash Kumar Srivastava are identical inasmuch as they were appointed by the same notification initially on *ad hoc* basis and admittedly the extensions were granted to them by the same notifications and subsequently they were appointed on regular basis, that too by same notification. Once, a judgment was rendered by this Court in case of late Vikash Kumar Srivastava by a coordinate Bench of this Court, which was subsequently approved by a Division Bench, the Court does not find any reason why the State ought not to have applied the clear finding and the law laid down by the Division Bench in case of ***State of Bihar Vs. Pushpa Sinha and Another*** (legal representatives of the said Vikash Kumar Srivastava) in respect of persons similarly situated.

12. Considering the discussion as noted above and the facts and circumstances of the case, this application is allowed with a direction to the respondents to grant the petitioner same benefits, which were granted in case of late Vikash Kumar Srivastava. Consequently, the period from which the petitioner worked on *ad hoc* basis will have to be counted for the purpose of



grant of Assured Career Progression/Modified Assured Career Progression. The petitioner shall also be entitled to pensionary benefits/revised pensionary benefits accordingly. Since the petitioner has superannuated, the Court is not required to go into the petitioner's claim for seniority.

13. The respondents are directed to determine and ensure that petitioner is paid his legal entitlements in terms of the present order within a period of three months from the date of receipt/production of a copy of this order.

14. This application is allowed with the above observation and direction.

15. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2021
Transmission Date	N/A

