

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6973 of 2019

- 1.1. Nawal Kumar Son of Late Raja Devi and Late Tej Narayan Yadav Resident of Village- Chakbhirvi, P.O.- Purushottampur, P.S.- Maniyari, Dist- Muzaffarpur.
- 1.2. Vina Devi Daughter of Late Raja Devi and Late Tej Narayan Yadav Resident of Village- Pakahi, P.O.- Baghi, P.S.- Maniyari, Dist- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Registrare, Govt. of Bihar.
2. The Directorate of Registration Department of Registration, Bihar, Patna.
3. The Registrar District Sub-Registry, Registration Office, Madhepura, District- Madhepura.
4. The Accountant General Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Alok Kumar Choudhary, Advocate Mr. Kulanand Jha, Advocate
For the Respondent/s	:	Mr Ram Yash Singh, Advocate Mr AC to AG

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date: 02-02-2022

One Tez Narayan Yadav was appointed as daily-wage Peon (Daftari) in 1983. He had approached this Court by filing a writ application giving rise to CWJC No. 1304 of 2003 seeking a direction to consider his case for regularisation. The said writ petition was disposed of by an order dated 08.02.2008 directing the respondents to consider his case for regularisation in terms of Supreme Court's decision in the case of *State of Karnataka vs. Uma Devi* reported in *2006(2) PLJR 363 (SC)*. His service



was regularised by an order dated 25.07.2008. He died on 07.04.2016 in harness.

2. The widow of said Tez Narayan Yadav filed the present writ application nearly three years thereafter, seeking direction to the respondents to pay to her family pension and all other retiral benefits treating regularisation of service of said Tez Narayan Yadav with retrospective effect from 03.10.1983 when he was engaged on daily-wage basis. The original petitioner died during the pendency of the writ application and has been substituted by the son and the daughter of late Tez Narayan Yadav.

3. Heard Mr Alok Kumar Choudhary, learned counsel appearing on behalf of the petitioner, assisted by Mr Kulanand Jha, Advocate, learned AC to AG for the State of Bihar and Mr Ram Yash Singh, learned counsel for the Accountant General, Bihar.

4. It is noted at this juncture that New Pension Scheme has come into force with effect from 01.01.2004 which does not provide for family pension. If the date of regular appointment of the deceased employee is treated to be from the date of regularisation, admittedly, he would not be entitled to pension/ family pension under the Bihar Pension Rules, 1950



(for short 'the Rules').

5. It is the petitioners' case, however, that the date of the first engagement of the government servant on a daily-wage basis should be treated to be the date of his regular employment for a determination whether his family members would be entitled to family pension or not.

6. The Accountant General, Bihar has formed a definite opinion that the widow of the deceased employee was not entitled to pension/ family pension.

7. Mr Alok Kumar Choudhary, learned counsel appearing on behalf of the petitioner has submitted that the entire service period of the deceased employee should be treated to be regularised period of service, once his service was regularised with effect from 25.07.2008. He has submitted that even the amount of gratuity has not been determined properly which has been calculated counting the service period from the date of regularisation i.e. 25.07.2008 till the date of his death i.e. 07.04.2016. Mr Choudhary has submitted that it will be unjust and arbitrary to deny the benefit of service rendered by the deceased government servant as a daily-wage employee despite his subsequent regularisation. Mr Choudhary has relied on certain instructions issued by the Department of Personnel and



Training, Government of India containing a scheme of 1993 for grant of temporary status and regularisation of a casual labourer, Clause 2.5 of which states that 50% of service rendered under temporary status would be counted for retirement benefits after their regularisation.

8. The office order issued by the Registration, Excise and Prohibition Department, Government of Bihar dated 25.07.2008, whereby the service of the deceased employee was regularised, has been brought on record by way of Annexure-2 to the writ application. It is mentioned in the said order that his engagement was being regularised with effect from the date of issuance of the said order. The deceased employee did not raise any objection against the decision of the department to regularise his service with immediate effect and did not raise any claim for regularisation of his service retrospectively.

9. In such view of the matter, in the Court's opinion, the petitioner cannot question the correctness of the said regularisation order dated 25.07.2008 which did not postulate retrospectivity in regularisation. The date of appointment of the deceased employee in the government service has thus been treated to be the date of issuance of the order of regularisation. There is no dispute that Bihar Pension Rules, 1950 is not



applicable for the employees of the State of Bihar appointed after coming into force of the New Pension Scheme with effect from 01.01.2004.

10. The submission of Mr Choudhary, based on the office memorandum dated 13.02.2020, issued by the Department of Personnel and Training, Government of India relating to grant of temporary status and counting of 50% of service rendered under temporary status for the purpose of retirement benefits after their regularisation, has no application in case of the employees under various departments of the State Government of Bihar. The said office memorandum lays down a scheme for grant of temporary status to all casual labourers. Clause 1.5 of the said scheme prescribes that such casual labourers, who acquired temporary status, will not be brought to permanent establishment unless they are selected through the regular selection process (erstwhile Group-D post).

11. In the Court's opinion, the said office memorandum has no application in the facts and circumstances of the present case. In this case, the service of the deceased employee was regularised with effect from the date when New Pension Scheme had already come into force. There is no rule/ regulation/ policy decision of the State Government requiring



the counting of past service on a daily-wage basis to make applicable Bihar Pension Rules, despite coming into force of New Pension Scheme, on the date of appointment. Rule 58 of the Rules lays down three essential conditions for the service of a government servant to qualify for a pension under the said Rules, one of which is that the employment must be substantive and permanent. Rule 58 of the Rules reads as under:-

“58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions :-

First- The service must be under Government.

Second- The employment must be substantive and permanent.

Third- The service must be paid by Government.

These three conditions are fully explained in the following sub-sections.”

12. It is easily noticeable on a reading of Rule 58 of the Rules that employment, which is not substantive and permanent, cannot be counted for determining the qualifying period for pension. The employment of the deceased employee was temporary, not on a substantive and permanent basis prior to coming into force of the New Pension Scheme.

13. In such view of the matter, the claim of the petitioners that the period during which the deceased employee



had worked as daily-wage labourer should be counted for determination of pensionary benefits under the Rules, in my opinion, is wholly misconceived.

14. This writ application is accordingly dismissed.

15. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NA
CAV DATE	27.10.2021
Uploading Date	11.02.2022
Transmission Date	NA

