IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10560 of 2019

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1. The Union of India Through the Secretary Cum D.G., Department of Posts, New Delhi.
2. The Chief Postmaster General Bihar Circle, Patna.
3. The Director of Postal Services (Hq) O/o Chief Postmaster General, Bihar Circle, Patna.
4. The Director Accounts (P) Patna GPO Campus, Patna.,
5. The Sr. Superintendent of Post Offices Gaya Division, Gaya.
6. The Assistant Superintendent of Posts Jehanabad Sub Devision, Jehanabad.

... ... Petitioner/s

Versus

Bindeshwari Prasad Son of Lagte jagdeo Prasad Resident of Village and P.O. - Dharaut, Dharaut, P.s.- Makhdampur, District - Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Kr.Singh,CGC

For the Respondent/s : Mr.Surendra Mishra,Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-09-2022

The Union of India have assailed the order dated 31.10.2018 passed in OA No. 50/572/2017 passed by the Central Administrative Tribunal, Patna Bench, Patna.

The grievance of the respondent is to extend pension and terminal benefits with reference to his service particulars that he was initially appointed on *ad hoc* basis and he was given temporary appointment on 04.07.1991 and it was subsequently given temporary status in the year 1994 read with the fact that he has attained age of superannuation and retired from service on 31.10.2015. He has been given the Group-D post status.

Learned counsel for the respondent-Union of India only contended that respondent refuse to accept promotion and his service is temporary. Therefore, he is not entitled to pension and terminal benefits.

The Tribunal examined the matter at Para 7 to 10 which reads as under:-

> *" Heard the parties and perused the records as also orders passed by this Tribunal in similarly employee's cases. It is noticed that undisputedly the applicant was granted Temporary Status on 04.07.1991, and after completion of 3 years of his regular service, he was considered at par with Group-D employee accordingly all benefits were extended to him. It is further noticed that on 04.09.2015, the respondents had offered him promotion to the post of MTS. However, the same was not accepted by the applicant due to his illness and also on the point that he was going to retired on 31.10.2015. Therefore, he had requested to the respondents to allow him to continue work with Temporary Status.*
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> *8. It is further notice that in the case of similarly situated employees. The benefit of pension was denied by the respondents on the ground of non-qualifying service. The said decision of the respondent was challenged by such employees by way of OA, being OA No. 777/2016 and OA 609/2017 before this Tribunal . After considering the various provisions for the purpose of qualifying service for grant of pension, the following observations/directions were made by this Tribunal in its order dated 20.09.2018passed in OA 777/2016 which reads as under:-*

"The temporary government servants are entitled to pension, retirement gratuity/death gratuity, family pension at the same scale as admissible to permanent Government servant under the CCS (Pension) Rules, 1972. Undisputedly, the applicant has rendered more than 01 years of continuous service and as such his right to claim pension has been accrued as per the provisions of Rule 10 of CCS (TS) Rules, 1965 read with Rule-2 of CCS (Pension) Rules, 1972.

14. In the present case, it is noticed that the applicant has rendered more than 27 years of service and he cannot be deprived of his legitimate right of pension. The present case is required squarely covered by the decision of this Tribunal dated 27.03.2018 in OA 372/2017 and dated 21.08.2018 in OA 609/2017. Under the circumstances, the service rendered by the applicant ought to be considered by the respondents as qualifying serviced for grant of pension.

15. In view of the above discussion, the OA is allowed. The respondents are directed to considered the claim of the applicant for fixation of his pension and grant of gratuity and all other retiral dues in the light of discussions made hereinabove and judgement passed in CWJC No. 11435/2017 and CWJC No. 10978/2017 as also order passed by this Tribunal in OA 372/2017 (supra) within a period of two months from the date of receipt of a copy of this order. No order as to interest of costs."

9. Learned counsel for the applicant also placed reliance on the order passed by the Tribunal in OA 449/2014, in the case of Dina Nath Jha vs. UIO & Ors decided on 24.02.201 (Annexure-A/8). On examination of the said referred orders passed by this Tribunal, it is noticed that is similarly situated casual labourers with temporary status, there 50% of service was computed for qualifying service to consider the claim for grant of pension. In the present case, the applicant is also entitled to be considered equally as per aforesaid orders as 50% service *of temporary status ought to be considered as qualifying service for grant of pension.*

10. In view of the above, the respondents are directed to consider the case of the applicant in the light of the above discussions and to take appropriate decisions for grant of pension and terminal benefits to the applicant by considering his 50% service as qualifying service. The entire exercise be completed within a period of 2 months from the date of receipt of a copy of this order. No order as to costs."

In the light of the aforesaid finding given by the Tribunal and there is no prohibition if an employee refuse to accept promotion order, in that event he is not entitled to pension and terminal benefits. The one and only ground urged by the petitioner-Union of India is hereby rejected while affirming the order of Tribunal dated 30.10.2018 passed in OA No. 50/572/2017.

Concerned petitioner is hereby directed to calculate qualifying service of the respondent towards extending pension and terminal benefits and disburse the same within a period of three months from the date of receipt of this order along with the interest at the rate of 8% per annum, in the light of the Apex Court decision in the case of **Vijay L. Mehrotra Vs. State of Uttara Pradesh and others** reported in **(2001) 9 SCC 687**. Further we find that it is not a fit case for filing writ petition against the order of Tribunal dated 31.10.2018 passed in OA No. 50/572/2017 having regard to the ground as urged by learned counsel for the petitioner-department. In other words, the present case is a frivolous hence we proceed to impose cost of Rs.25000/-. Cost shall be paid to the respondent towards litigation cost.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

abhishekkr/-

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