IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.987 of 2018
In
Civil Writ Jurisdiction Case No.20341 of 2013

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Saroj Devi Wife of Late Anil Kumar Sinha, Resident of Village-Gurukul Satar, P.O.-Gurukul, P.S.-Kunda, District-Deoghar Jharkhand.

... ... Appellant/s

Versus

1. The State of Bihar
2. The Additional Home Commissioner-Cum-Inspector General of Prison, Government of Bihar, Patna.
3. The Assistant Inspector General of Prison, Bihar, Patna.
4. The Superintendent, Central Jail, Gaya.
5. The Accontant General, Bihar, Birchand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Raju Giri, Advocate Mr. Santosh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Saroj Kumar Sharma, AC to AAG-3

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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 : 30-08-2022

The appellant has assailed the order of the learned Single Judge dated 18.07.2014 passed in CWJC No. 20341 of 2013.

02. The appellant Saroj Devi is wife of late Anil Kumar Sinha (deceased). Deceased employee was appointed in the year 1984 and continued his service till the year 1995. On account of his death, whether Saroj Devi is entitled to arrears of pension and family pension or not?

03. Deceased employee was working in the prison department. Employee of the prison department are Government servant and such of those Government servant who have attained age of superannuation and retired from service they are governed by rules called Bihar Pension Rules, 1950. Rule 61 stipulates that service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

04. Undisputedly, appellant's husband was not holder of a substantial post and had a status of Government servant in the department of prison. That apart, it is necessary to reproduce the following rules which qualifies for Pension. Rule 29, 30 and 31 reads as under:-

> *"29. Pensionable service means service which qualifies the Government servant performing it to receive a pension from general revenues.*
>
> *30.Permanent Government servant means a Government servant who holds a lien on a permanent post or would hold a lien on such a post had his lien not been suspended.*
>
> *31.Permanent post means a post carrying a definite rate of pay and sanctioned without limit of time.*

05. Under chapter IV relating to Service Qualifying for Pension, Rule 56 to 60 reads as under:-

> *"56. Unless it be otherwise provided by special rule or contract, the service of every*

*Government servant qualifies from the date on which he takes charge of the post to which he is first appointed.[**Comments**- A Govt. servant is entitled to a pension from the date from which he takes charge of the post on which he is first appointed.]*

*57. For a Government servant is inferior service, qualifying service, shall not being until the Government servant concerned attained the age of 16 years. [**Comments**-See rule 5 of Liberalized Pension Rules in Appendix-5 raising, minimum age of 16 years mentioned in this rule to 18 years.]*

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.

59. The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditon (1) and (2) are not fulfilled-
(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;
*(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension. [**Comments**- See rule 6 of Liberalized Pension Rules (Appendx-5) and State Government decisions thereunder regarding counting of temporary service as qualifying service. State Government decisions- ***Regarding**- Declaration of temporary service of a Government servant who is not confirmed as pensionable. Under*

the existing pension rules, a temporary Government servant if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under rule 59 of the Bihar Pension Rules.

2.There are a large number of temporary Government servants employed under different schemes which are in existence for the last 15-20 years and it will cause hardship to them, if they are not allowed pension after their retirement.

3.The State Government after careful consideration have, therefore, been pleased to decide that, if the service of the temporary or officiating Government servant who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under rule 59 of the Bihar Pension Rules.

*4.These orders will be applicable to Government servants retiring on or after 12 August, 1969. [*Vide Memo No. Pen 1024/69/11779 F., dated 12-8-1969.]*

2.See State Govt. decision below Rule 60.

3.See State Govt. decisions below paragraphs 5 and 6 of the Liberalized Pension Rules in Appendix-5.

4.See State Govt. decisions no. 2,3,4 and 5 below Rules 203 regarding counting of service of work charged staff brought over to regular establishment.

Sub-Section (2)- First Condition- Service under Government.

60.The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government servants excluded from pension by this rule;

(1)Employees of a municipality,

(2) Employees of grant-in-aid schools and institutions.

> *(3) Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance.*
>
> ***Note 1.**- If a Government servant has served partly (in a capacity which would have given his claim to pension. If the service had been paid form the general revenues), on the house hold establishment of the Governor, and partly on establishments paid from the general revenues, he is entitled from the general revenue, to a share of any pension to which he would have been entitled if his whole service had been paid from the general revenue, proportionate to the length of the service which has been so paid."*

06. Reading of the aforesaid provisions it is crystal clear that the deceased Anil Kumar Sinha has no status of holder of substantial post read with the Government servant. The aforesaid ingredients are mandatory for the purpose of extending pension and family pension under the Bihar Pension Rules, 1950.

07. On the other hand, learned counsel for the appellant Saroj Devi vehemently contended that even though, deceased, Anil Kumar Sinha is not a Government servant or he was not holder substantial post at the same time he is entitled to pension and appellant is entitled to family pension in terms of circular vide Memo No. Pen 1024/69/11779 F., dated 12-8-1969 for temporary government servant even though if he is not confirmed such person is entitled to pension and his legal heir is entitled to family pension under Bihar Pension Rules, 1950. Fur-

ther, he relied on reported decision namely **The State of Bihar through the Principal Secretar, Public Health Engineering Department & Ors. vs. The State of Bihar through the Principal Secretary, Public Health Engineering Department & Ors.** reported in **2019 (1) PLJR 1015.** The relevant para 7, 8, 9 and 70 reads as under:-.

> *"7. The Supreme Court in the case of Jaswant Singh and Ors. vs. Union of India and Ors. (supra) had the occasion to explain the nature of a work-charged establishment and the status of an employee of such establishment. It would be profitable to quote paragraphs 42, 43 and 44 of the aforesaid judgment, which succinctly sum-up the nature of a work-charged establishment and the status of the employee of the aforesaid establishment.*
>
> *42. A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "work". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.*
>
> *43. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end*

on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees' State Insurance Schemes.

44. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. The work-charged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

8. Thus, what is of relevance to note is that the wages and allowances of an employee of a work-charged establishment are not paid from the Government revenue, but are chargeable to work and is shown as a separate sub-head of the estimated cost of the work. Since the nature of the employment is co-terminus with the life of the project, ending with the completion of the work, such employees would not get the benefits which a government employee gets like relief under Payment of Gratuity Act, retrenchment benefits or Employees' State Insurance Schemes. They are, but, entitled to the benefits of the provisions contained in the Industrial Disputes Act, 1947.

9. In State of Rajasthan vs. Kunji Raman (supra), the Supreme Court, again, relying upon the decision in case of Jaswant Singh and Ors. vs. Union of India and Ors. (supra) held that a work-charged establishment is materially and qualitatively different from a regular establishment and the employees engaged in a work-charged establishment are recruited differently and have different service conditions. The Supreme Court, therefore, found that a work-charged establishment is a separate class and no parity could be drawn between a work-charged employee and an employee of a regular establishment.

70. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that till the time, appropriate rules in this regard is framed by the Government: —

(i) That a work-charged employee who has completed ten (10) or more years of continuous service against one post in the work-charged establishment will be paid Pension and his family, in case of death of such work-charged employee, would be paid the family Pension.

(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their heirs and dependants would be entitled to claim death-cum-retiral benefits.

(iii) However, the dependants of a work-charged employee

> *would not be entitled to claim appointment on compassionate ground in the absence of any scheme framed by the Government for such work-charged establishment."*

08. Learned counsel for the respondent-state resisted the aforesaid contentions and submitted that as long as deceased employee has not got the status of Government servant while holding substantial post in a department, in such an event temporary employee is not entitled to pension even though if he has rendered more than 10 years of service. It is submitted that it is a mandatory requirement that one must be Government Servant and he/she should have working in a substantial post. In the cited decision there is no appreciation the provisions of Bihar Pensions Rules, 1950, in particularly, service qualifying for pension. It is also submitted that circulars/memo dated 12.08.1969 do not assist the appellant as long as relevant provision under Chapter IV of the Bihar Pension Rules, 1950 is amended appropriately. The aforesaid order do not override statutory rules.

09. Heard learned counsel for respective parties.

10.Core issue involved in the present appeal is whether the deceased employee Anil Kumar Sinha and his wife appellant are entitled to pension and family pension or not?

11. Undisputed facts are that, Late Anil Kumar Sinha had joined service in the prison department on temporary basis in the year 1984 without regularization of his services he continued up to the year 1995, thereafter, he died. For the purpose of claiming pension and family pension deceased employee is required to fulfill qualifying service for pension under chapter IV of Bihar Pension Rules, 1950. With reference to cited Rule 56 to 60 read with Rule 29, 30 and 31 deceased Anil Kumar Sinha do not fulfill the aforesaid criteria for the purpose of extending pension and further family pension to appellant.

12. The appellant counsel relied on memo dated 12.08.1969 and cited decision supra do not assist the case of the appellant for the reasons that memo dated 12.08.1969 cannot override statutory rules made under Article 309 of the Constitution. The same would be hurdle for the purpose of extending relief sought by the appellant.

13. The cited decision do not assist the appellant for the reasons that Apex Court in the case of **Nair Service Society v. Dr. T. Beermasthan** reported in **(2009) 5 SCC 545.** In para 48, it is held as under:-

> *"**48.** Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence*

> *should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and* 562 *different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."*

14. The procedure laid down by the Apex Court in the aforesaid decision is that relevant statutory rule has to be taken into consideration before examining any judicial pronouncement. In the present case reading of the aforesaid provisions of law under the Bihar Pensions Rules, 1950, the deceased Anil Kumar Sinha has not fulfilled the criteria of getting the status of the Government servant and he is not holder of the substantial post. Further as long as reading under chapter IV is not amended in so far as criteria that one must be Government servant and he must be holder of substantial post to that of temporary employee and holder of temporary post also, the appellant is not entitled with a tag of temporary employee and holder of temporary post.

15. Recently, Hon'ble Apex Court in the case of **Bank of Baroda and Anr. vs. G. Palani and Ors.** reported in **(2022) 5 SC 612,** it is held that no Government order, notification or circular can substitute or statutory rules or regulations framed under

authority of law (Para 17 to 28) the aforesaid principle laid down by Apex Court would be hurdle in granting any relief to the appellant.

16. Accordingly the appellant has not made out case. Hence, the present Letters Patent Appeal stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

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