

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1046 of 2021

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Mohammadin Ansari, Son of Late Saiyad @ Saiyad Hussain, Resident of Village-Mukundpur, P.S.-Taraiya Sujan, District-Kushinagar (U.P.) at present residing in the house of Md. Atique Ahmad at Maula Nagar, P.S. Belsand, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer, R.e.O.-II, Road Construction (Work) Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Circle, Muzaffarpur, District-Muzaffarpur.
5. The Executive Engineer, Rural Works Department, Works Division, Sheohar, District-Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Advocate
For the Respondent/s : Mr. Kameshwar Prasad Gupta, GP 10

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 17-01-2022

This matter is heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 Pandemic.

Mr. Kameshwar Prasad Gupta, learned GP 10 accepts notice for State-respondents.

Learned counsel for the petitioner is hereby directed to furnish a copy of the petition to learned counsel for the State-respondents.

In the instant petition, petitioner has prayed for the following reliefs:-



“(i) For issuance of a writ in the nature of mandamus directing and commanding the respondent to treat the services of the petitioner as a regular employee under the State Government in the light of judgment of this Hon’ble Court passed in the case of Pawan Kumar Srivastava and others as reported in 2011(2) B.L.J. 345 as also the Full Bench Judgment of the Hon’ble Jharkhand Court passed in the case of Ram Prasad Singh as reported in 2005 JLJR 38 and thereby to pay the retiral benefits including pension, gratuity, leave encashment and A.C.P. upon granting him the benefit of regularisation after completion of 10 years’ service under work charge establishment in the department.

(ii) For issuance of further writ in the nature of certiorari for quashing the order contained in Memo No. 96 dated 28.02.2017 issued under the signature of Superintending Engineer, Respondent No. 4, whereby and whereunder in compliance to the order of this Hon’ble Court dated 10.08.2016 passed in CWJC No. 7777 of 2013. The claim of the petitioner has been rejected in a mechanical and arbitrary manner ignoring the laws laid down in the case of Pawan Kumar Srivastava reported in 2011 (2) BLJ 345 as also Full Bench Judgment reported in 2005 JLJR 38 upheld by Hon’ble Supreme Court, copy of order dated 03.05.2007 passed in CWJC 16060/2004 and legal claim of the petitioner for regularization has been turned down.



(iii) For issuance of an appropriate declaration and holding that once admittedly the petitioner worked for more than 17 years in work charge in regular pay scale with all revision of pay and his work was perennial in nature, his service was fit to be taken into regular establishment as provided under P.W.D. code which has a force of law and accordingly he is fully entitled to entire retiral benefits including Pension, Gratuity, Leave Encashment, A.C.P. and other admissible benefits which have not been paid although petitioner has retired on 31.12.2013 and now the said retiral benefits are required to be paid to the petitioner forthwith.

(iv) Issuance of a further writ in the nature of Mandamus directing and commanding the respondents to make payment of post-retirement dues including Pension, Gratuity, Leave Encashment in lieu of unutilised leave, A.C.P. and other Post retiral benefits forth with along with interest @ 18% per annum and penal interest even in the light of decision of Full Bench of this Hon'ble Court in the case of Mobina Khatoon vs. The State of Bihar and others as reported in 2019(2) BLJ 9.

(v) Any other relief or reliefs be granted to petitioner to which he is found to be entitled to."

Petitioner has not established legal or vested statutory right followed by demand before the competent authority. In the light of Hon'ble Apex Court decision in the case of **Mani Subrat**



Jain vs. State of Haryana reported in **(1977) 1 SCC 486** the petitioner is not entitled to relief sought in the present petition in the absence of established legal/statutory right followed by demand before the competent authority.

Accordingly, the present writ petition stands disposed off reserving liberty to the petitioner to file representation within a period of eight weeks from the date of receipt of this order, thereafter, the concerned authority is directed to decide the petitioner representation within a period of three months.

(P. B. Bajanthri, J)

Vikash/-

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

