

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1771 of 2018

In
Civil Writ Jurisdiction Case No.3582 of 2017

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1. Mithilesh Kumar, S/o Late Mathura Sharma, Resident of Village- Sultanpur, P.S. Hulasganj, District- Jehanabad, Superannuated from the post of Head Clerk, while posted in Sub-Divisional Agriculture Office (Extension), Hilsa, District- Nalanda. At present District Agriculture Office, Nalanda.
 2. Braj Bhushan Singh, S/o Late Gaya Prasad Singh, R/o Girija Nagar, Suresh Colony, P.O. and P.S. Sadar, Hazaribagh, Distt-Hazaribagh. At Present posted as Head Clerk, in the Office of Joint Director Agronomy, Patna Division, Mithapur, Patna.
 3. Dilip Kumar Sinha, S/o Late Tapeswar Prasad Sinha, At and P.O. Farbisganj, Mohalla- Post Office Chouk, Distt-Araria, Superannuated from the Post of Head Clerk, While posted in the Office of Sub-Divisional Agriculture (General) Office, Hilsa (Nalanda).
 4. Ram Raja Prasad, S/o Late Ganesh Prasad, R/o Village-Torwa, P.S. Jharaukhar (Ghorasahan), Distt-East Champaran, At Present Posted as Head Clerk in Sub-Divisional Agriculture Office, Mithapur, Patna.
 5. Amrendra Kumar S/o Late Bundi Ram, At and P.O. Wazirganj, Distt.- Gaya. Superannuated from the post of Head Clerk while posted in the office of Project Executive Officer, Kasba, Distt.- Purnea.
 6. Satya Narayan Sharma, S/o Late Singheshwar Singh R/o Village- Mokamah (Sakarwar Tola), P.S. Mokamah, Distt.- Patna, Superannuated from the post of Head Clerk while posted in the Office of Project Executive Officer, Katihar.
 7. Ram Babu Singh, S/o Late Gorakh Singh, R/o Village-Mohanpur, Via- Rajaura, Mufasil, Begusarai, Distt-Begusarai, Superannuated from the Post of Head Clerk While Posted in Sub-Divisional Agriculture Office, Dalsingsarai.
 8. Dinkar Jha, S/o Late Vedanand Jha, R/o Village-Bhawanipur, Vaya- Naugachhia, Distt-Bhagalpur. Superannuated from the post of Head Clerk while posted in, Sub-Divisional Agriculture Office, Distt.-Bhojpur.
 9. Sanjeev Kumar-I, S/oLate Nand Kumar Prasad, Flat No. 1-2, Block-A, Paradise Apartment, New Aria, Kadamkuan, Distt.- Patna, At present posted as Head Clerk in District Agriculture Office, Mithapur, Patna.
 10. Sanjeev Kumar-II, S/o Late Arjun Prasad, R/o Village-Fatahpur, P.O. and P.S. Gogri Jamalpur, Distt-Khagaria, At Present Posted as Head Clerk, in Sub-Divisional Agriculture Office, Danapur, Distt-Patna.
 11. Lalan Prasad, S/o Late Ram Nath Prasad, At-Sandha Khewaji Tola, P.O. Sandha, Distt-Saran (Chapra), Superannuated on 31-01-2017 while posted as Head Clerk, Sub-Divisional Agriculture Office, Chhapra, Distt-Saran.
 12. Rabindra Kumar, S/o Late Mathura Prasad, At Mandiri, Post-G.P.O. P.S. Budha Colony, Distt-Patna. Superannuated from the post of Head Clerk while posted in the Office of Joint Director Agriculture, Patna.



13. Binod Prasad Saha, S/o Dhan Lal Sah, R/o Village-Tikapur, P.S. Kasba, Distt-Purnea, Superannuated from the post of Head Clerk while posted in the Office of Project Executive Officer, Korha, Distt.-Katihar.
14. Bhubneshwar Lal Mandal, S/o Late Arjun Lal Mandal, At and P.S. Kasba, Distt-Purnea. Superannuated from the post of Head Clerk While posted in Project Executive Officer, Araria, Distt-Araria.
15. Md. Sarif, S/o Late Abdul Kasim, At present posted as Head Clerk, Sub-Divisional Agriculture Office (General), Sitamarhi. Superannuated from the Post of Head Clerk while posted in the Sub-Divisional Office, Sitamarhi.
16. Indra Kant Jha, S/o Late Ram Chandra Jha, At and P.O. Goghardiha, Distt-Madhubani Superannuated from the post of Head Clerk, while Working in the office of Joint Director Agriculture, Gaya.
17. Jitendra Pandey @ Jitendra Kumar Pandey, S/o Late Haribansh Pandey, R/o Village-Daud Nagar, Distt-Aurangabad. Superannuated on 31.07.2015 While posted as Head Clerk, Project Extension Office, Mohania, Distt-Kaimur.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, General Administrative Department, Old Secretariat, Patna, Bihar.
4. The Agriculture Production Commissioner, Department, of Agriculture, New Secretariat, Patna, Bihar.
5. The Principal Secretary, Department of Agriculture, New Secretariat, Patna, Bihar.

... .. Respondent/s

with
Letters Patent Appeal No. 1732 of 2018
In
Civil Writ Jurisdiction Case No.16773 of 2017

1. Ram Surat Singh Son of Late Shankar Singh Resident of Village-Chhitratand, P.S.-Chenari, District-Rohtas.
2. Bijendra Prasad Singh Yadav Son of Late Mangal Prasad Singh Yadav Resident of Village- Amari, P.S.-Dharahra, District- Munger.
3. Karamchand Sah Son of Late Dwadashi Sah Resident of Village-Tekniwash, P.S.-Revilganj, District- Saran at Chapra.
4. Tulakant Jha Son of Late Rajeshwar Jha Resident of Village- Navkarhi, P.S.- Benipatti, District- Madhubani.
5. Nawal Kishore Prasad Singh Son of Late Prasadi Mandal Resident of Village- Mozaffara, Bardih, P.S.- Islampur, District- Nalanda at Biharsharif.
6. Ved Prakash Lal Son of Late Ganesh Prakash Lal Resident of -A/307, Durga



Marine Drive, East of Rajapur Pul, Durja, P.S.- Budha Colony, Patna-800001.

7. Anandi Bhagbat Son of Late Munshi Bhagat Resident of- Flat No. 202, Nirmala Kunj Apartment, Maurya Path, Khajpura, Patna- 800014.
8. Umesh Prasad Singh Son of Late Ram Kishun Mahto Resident of- West Laxmi Nagar, Near Sheo Mandir, Khemnichak, Patna-800002
9. Mostt. Vijaya Kumari wife of Late Kameshwar Mahto Resident of Virkaur Singh Colony, Behind Durga Palace, P.S. and District-Samastipur.

... .. Appellant/s

Versus

1. The State of Bihar through the Agricultural Production Commissioner, Department of Agriculture, New Secretariat Building, Bihar, Patna.
2. The Agricultural Production Commissioner, Department of Agriculture, New Secretariat Building, Bihar, Patna.
3. The Principal Secretary, Department of Finance, Old Secretariat Building, Bihar, Patna.
4. The Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna.
5. The Secretary, Rural Works Department, Vishweshwaraiya Bhawan, Bailey Road, Bihar, Patna.
6. The Principal Secretary, Building Construction Department, Vishweshwaraiya Bhawan, Bailey Road, Bihar, Patna.
7. The Principal Secretary, Irrigation Department, Sinchai Bhawan, Bihar, Patna.
8. The Administrator, Bihar State Agricultural Marketing Board (Dissolved), Pant Bhawan, Bailey Road, Bihar, Patna.
9. The Accountant General, Beerchand Patel Path, Bihar, Patna.
10. Ajit Kumar Roy Son of Late Phulchand Roy resident of Village Jagatpur, P.S. and District Banka.
11. Rudra Prasad Singh, Son of Late Harivansh Singh Resident of - 5/1073, Sheo Sadan, New Colony, Katharibagh Road, Chapra, P.S.-Town Chapra, District- Saran at Chapra.

... .. Respondent/s

with
Letters Patent Appeal No. 1772 of 2018
In
Civil Writ Jurisdiction Case No.5374 of 2017

Nandu Singh, S/o Late Ram Kathin Singh, R/o Village- Bajitpur, P.S. Ghoshi, Distt- Jehanabad, Superannuated from the post of Block Panchayati Raj Officer, Block- Maner, Distt- Patna.

... .. Appellant/s



Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, General Administrative Department, Old Secretariat, Patna, Bihar.
4. The Agriculture Production Commissioner, Department of Agriculture, New Secretariat, Patna, Bihar.
5. The Principal Secretary, Department of Agriculture, New Secretariat, Patna, Bihar.
6. The Principal Secretary, Panchayati Raj Department, New Secretariat, Vikash Bhawan, Government of Bihar, Patna.
7. The Administrator, Bihar State Agriculture Marketing Board (dissolved), Pant Bhawan, Bailey Road, Patna.
8. The Accountant General Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

with

Letters Patent Appeal No. 1773 of 2018

In

Civil Writ Jurisdiction Case No.4429 of 2017

1. Ram Yash Sah S/o Sri Yougeshwar Sah, R/o Village Rambhelahi, P.S. Parihar, Distt-Sitamarhi. At Present an Employee of Building Construction Department, Government of Bihar, Patna and Presently Posted as Electrical Junior, Electrical Works Section-Chhapra Under Electric Works Division, Muzaffarpur, Building Construction Department, Muzaffarpur
2. Rama Kant Singh S/o Late Gupteshwar Singh, R/o Village- Kapasia, P.S. Kandawa, Distt.-Chandauli, State of U.P. Superannuated as Electrical Junior Engineer, Under Electrical Works Division, Darbhanga. Building Construction Department Darbhanga
3. Raj Narayan Upadhaya S/o Late Baidya Nath Upadhaya R/o Village-Kazipura, P.S. Doriganj, Distt-Chapra, Superannuated as Electrical Junior Engineer, Under Electrical Works Division Darbhanga, Building Construction Department, Darbhanga
4. Kaushal Kishore Mandal S/o Late Dahogi Mandal R/o Village-Kamal Nagar Colony, P.S. Mojahitpur, Distt-Bhagalpur Superannuated From the Post of Electrical Junior Engineer, Electrical Estimating Division No.2, Building Construction Department, Bisheshraiya Bhawan, Patna Presently as Reorganized Electrical Works Division, Darbhanga, Building Construction Department, Darbhanga. Electrical Works Division, Darbhanga, Building Construction Department, Darbhanga

... .. Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna



2. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar
3. The Principal Secretary, General Administrative Department, Old Secretariat, Patna, Bihar
4. The Agriculture Production Commissioner, Department of Agriculture, New Secretariat, Patna, Bihar
5. The Principal Secretary, Department of Agriculture, New Secretariat, Patna, Bihar
6. The Principal Secretary, Building Construction Department, Bishesaraiya Bhawan, Bailey Road, Patna
7. The Administrator, Bihar State Agriculture Marketing Board (Dissolved), Pant Bhawan, Bailey Road, Patna
8. The Accountant General Bihar, Birchand Patel Path Patna

... .. Respondent/s

with
Letters Patent Appeal No. 1809 of 2018
In
Civil Writ Jurisdiction Case No.8434 of 2017

1. Ashok Kumar, Son of late Ganga prasad Resident of Village Chanpatia, P.s. Chanpatia District, West Champaran.
2. Nagendra Singh Son of Late Collector Singh Resident of Village Parsauna, P.s. Ramgarhwa, District East Champaran.
3. Dewraj Prasad Yadav Son of Late Dwarika Raut Resident of Village Puraig Gosai, P.s. Chanpatia District West Champaran, Presently at Ward No. 6, Narenpur, Ramnagar, West Champaran.
4. Brij Bihari Mahto Son of Late Ram Govind Mahto Resident of village Ghumnagar, P.s. Shikarpur, District West Champaran
5. Dipnarayan Tiwary Son of Late Sipahi Tiwary Resident of Village Mamarkha, P.s. Govindganj District West Champaran.
6. Krishan Baitha Son of Mukul Baitha Resident of village Ujjain Tola P.S. Bettiah, District West Champaran
7. Ramjit Choudhary Son of Late Nathu Choudhary Resident of Kathgharwa, P.s. Shikarpur, District West Champaran
8. Pramod Kumar Son of Late Janakdhari Prasad Resident of village Har Saraiya, Post Ojhwalia District West Champaran.
9. Gauri Shankar Sah Son of Late Manu Sah Resident of village Hira Pakar, P.S. Manuapul District East Champaran.
10. Nagendra Prasad Son of Late Laxmi Prasad resident of Kotwali Chowk P.S. Mufassil Bettiah, District West Champaran
11. Vinay Kumar Mishra Son of Late Awadhesh Mishra Resident of Village Kehunia, P.S. Shikarpur, District West Champaran.
12. Krishan Ram Son of Late Gaya Ram Resident of Village Sakhubania



Jamunia, P.s. Shikarpur District West Champaran.

13. Angad Thakur Son of Late Ram Ekbal Thakur Resident of Village Jinhasini, P.S. Ramgarhwa, District East Champaran.
14. Sarful Hoda Son of Late Md. Muslim Resident of village Karanmeya, P.S. Mufassil Bettiah, District West Champaran.
15. Rajwanshi Ram Sopn of Late Hari Ram REsident of Village Sukhlahi, P.s. Ramgarhwa Distt East Champaran.
16. Reyazuddin Khan Son of Late Nathuni Mian Resident of village banker, P.S. Chanpatia Distt. West Champaran.
17. Arjun Singh wson of Late Muneshwar Prasad Singh Resident of village Baghsaid Khan, P.s. Biddupur District Vaishali.
18. Javed Akhtar Son of Late Md. Taiyab Resident of village Bhola Tola, P.s. Chanpatiya, Distt West Champaran.
19. Umesh Prasad Son of Jagdish Prasad Resident of Mohalla Shivgank, P.s. Chanpatiya, Distt. West Champaran.
20. Vinay Kumar Srivastva Son of Late Vasudev Prasasd Resident of village Damodarpur, P.s. Govindganj, Distt. East Champaran.
21. Baleshwar Prasad Son of Late Adya Prasad Resident of village - Sherwa, P.s. Shikarpur, Distt. West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Finance Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Department Govt. of Bihar, Patna.
4. The Agriculture Production Commissioner, Agriculture Department, Govt. of Bihar, Patna.
5. The Principal Secretary, Agriculture Department Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1771 of 2018)

For the Appellant/s : Mr.Jai Prakash Verma

For the Respondent/s : Mr.Chitranjan Sinha

(In Letters Patent Appeal No. 1732 of 2018)

For the Appellant/s : Mr.Abhinav Srivastava

For the Respondent/s : Mr.Chitranjan Sinha (Paag2)

(In Letters Patent Appeal No. 1772 of 2018)

For the Appellant/s : Mr.Jai Prakash Verma

For the Respondent/s : Mr.Sarvesh Kumar Singh

(In Letters Patent Appeal No. 1773 of 2018)

For the Appellant/s : Mr.Jai Prakash Verma

For the Respondent/s : Mr.Sarvesh Kumar Singh

(In Letters Patent Appeal No. 1809 of 2018)

For the Appellant/s : Mr.Mrityunjay Kumar

For the Respondent/s : Mr.Sarvesh Kumar Singh, AAG-13



**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

Date : 29-11-2022

In these bunch of appeals, appellants have assailed the following orders of the learned Single Judge passed in following C.W.J.Cs:-

Sl. No.	Impugned Order	Passed in
1.	20.11.2018	C.W.J.C. No. 3582 of 2017
2.	20.11.2018	C.W.J.C. No. 4429 of 2017
3.	20.11.2018	C.W.J.C. No. 5374 of 2017
4.	20.11.2018	C.W.J.C. No. 8434 of 2017
5.	20.11.2018	C.W.J.C. No. 16773 of 2017

2. The appellants were employees of the then Bihar State Agriculture Marketing Board (for short 'the Board') prior to 01.09.2006. The employees of the Board were governed by C.P.F. Pension Scheme. Due to dissolution of the Board on 01.09.2006, the State Government took a policy decision to absorb such a those employees of the then Board were to be absorbed in different departments. In this regard, a decision was taken on 02.09.2008, while absorbing all such of those employees. It was made clear that their appointments were afresh and New Pension Scheme is application. In this regard, certain litigations were subject matter before this Court in which



it is held that service rendered in the then Board is required to be taken note of for the purpose of extending certain service benefits. Accordingly, State Government have extended benefit of ACP/MACP depending upon each employee service particulars. When things stood thus, the appellants demand in respect of extending Old Pension Scheme was declined. Thus, appellants have invoked remedy under writ jurisdiction in filing aforementioned writ petitions in which they suffered orders. Hence, the present L.P.As.

3. The learned counsels for the appellants submitted that past service rendered in the then Board have been considered for the purpose of extending ACP/MACP benefits and in such an event, they are entitled to count past service for the purpose of extending pension under the Old Pension Scheme of the State Government. In this regard, they heavily relied on Resolution dated 14.09.2020 read with a decision of this Court passed in C.W.J.C. No. 4452 of 2012 decided on 22.05.2015 (*Ram Surat Singh & Others Vs. The State of Bihar and Others*) and further L.P.A. No. 716 of 2017 decided on 12.12.2017 (*Mukteshwar Prasad Singh and Others vs. The State of Bihar and Others*).

4. *Per contra*, learned counsel for the State



respondent resisted the aforesaid contentions and submitted that the appellants were holder of non-pensionable post in the then Board. Therefore, they are not entitled to pension under Old Pension Scheme. He has also pointed out applicability clause of Old Pension Rules called Bihar Pension Rules, 1950. Further, it is submitted that for the purpose of application of Old Pension Rules, 1950, Government Servant must fulfill the criteria laid down in the Pension Rules. The question of applicability of Old Pension Rules as on 02.09.2008, the date on which the appellants' services were absorbed in various department and they had status of government servants, as on 02.09.2008, Old Pension Rules, 1950 was not existing in the eye of law, since New Pension Scheme was introduced with effect from 01.09.2005.

5. Learned counsel for the appellants submitted that the learned Single Judge has committed error only while taking the cut off date for Old Pension Scheme read with date of appointment (absorption) and failed to apprise that the appellants have been extended benefit of ACP/MACP etc.

6. In support of decision of the State Government in declining Old Pension to the appellants, Respondents counsel relied on Full Bench decision in the case of *Harishankar*



Prasad Vs. The State of Bihar and Others read as under:-

“9. It is required to be noted that in fact, all the writ petitioners were facing retrenchment due to the closure of the Corporation and even the Corporation was not in a position to pay salary to its employees and, therefore, on humanitarian ground, a policy decision was taken to absorb/appoint them in the Government so that they are not rendered job less.

10. Now, so far as reliance placed upon the decision of the Hon'ble Supreme Court in the case of Kapila Hingorani (supra) by the learned counsel appearing on behalf of the respective writ petitioners is concerned, on considering the facts of the case, the said decision shall not be applicable to the facts and circumstances of the case on hand. It was in the peculiar facts and circumstances, the Hon'ble Supreme Court had directed the State reminding them on their moral duty to pay some salary to the employees of the Corporations who were facing difficulties. On the contrary in paragraph-74, the Hon'ble Supreme Court has specifically clarified that the order is not intended to lay down the law that the State is directly or vicariously liable to pay salaries/remunerations to the employees of the public sectors undertakings or the government companies in all situations. The Hon'ble Supreme Court has clarified that the order is based on humanitarian ground by observing that the State cannot escape its liability when human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time. Therefore, the aforesaid decision shall not be applicable to the facts and circumstances of the case on hand, more particularly, with respect to pension/pensionary benefits as claimed for the period the writ petitioners served with the Corporation prior to their absorption with the State Government.

11. Now, so far as the payment of pension/pensionary benefits by the State Government on pro-rata basis considering the services rendered by the employees with the State Government is concerned, the same is absolutely in consonance with Rule 58 of the Bihar Pension Rules, which deals 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.

"Therefore, until and unless the services of the employees are under Government, such an employee shall not be entitled to the pension and/or shall not be qualified for pension. The services rendered by the concerned employees with the Corporation cannot be said to be the services under the Government. Under the circumstances, the State Government is justified in paying the pension/pensionary benefits on pro-rata basis considering the services rendered by the concerned employees with the State Government only.

12. Even otherwise, the concerned employees shall not be entitled to the pension/pensionary benefits for the services rendered by them prior to their absorption with the State Government counting their services rendered by them with the Corporation as there was no pension scheme applicable to the employees of the Corporation. As observed in above, on humanitarian ground, as the Corporation was facing closure and to see that the concerned employees may not become jobless, a policy decision was taken to appoint/absorb the concerned employees in the State Government. Therefore, if the Corporation would not have faced the closure, in that case, the concerned employees would have been continued with the Corporation and as such there was no pension scheme applicable, they would not have been given the pension while serving with the Corporation. Therefore, merely because, subsequently, they were absorbed/appointed with the State Government on humanitarian ground, they shall not be entitled to pension/pensionary benefits for the period when they were not governed by the pension scheme while serving with the Corporation".

7. Heard learned counsel for the respective parties.

8. The core issue involved in the present lis is whether appellants are entitled to have the benefit of Bihar Pension Rules, 1950 or New Pension Scheme introduced on 01.09.2005 or not?

9. The appellants were employees of the then Board up to 01.09.2006, the date on which the Board was



dissolved by the State Government. Thereafter, their services were absorbed on 02.09.2008 in different departments. They have been extended benefit of ACP/MACP while taking the past service rendered in the Board. They have been denied benefit of past service read with the Bihar Pension Rules, 1950 and they have been extended New Pension Scheme, which was introduced on 01.09.2005 read with date of absorption as 02.09.2008.

10. It is to be noted that appellants, who were employees of the then Board were holders of non-pensionable post and they were extended New Pension Scheme (NPS) and not with reference to Bihar Pension Rules, 1950. Some of the provisions of Bihar Pension Rules, 1950 is required to be taken note of.

11. It is necessary to examine the Bihar Pension Rules, 1950. Part I Rule 2 reads as under:-

“2. Except where otherwise provided these rules apply to all Government servants to whom the rules in the Bihar and Orissa Service Code apply.”

Rule 29 reads as under:-

“29. Pensionable service means service which qualifies the Government servant performing it to receive a pension from general revenues.”

Chapter VI relates to service qualifying for pension. Rule 58 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.”

Similarly, Sub-Rule (2)-First Condition-Service under Government. Rule 60 reads as under:-

“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 from 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, proportionate to the length of the service which has been so paid.”

Sub-Rule (3)-Second Condition-Substantive and Permanent Employment.

(I) General

“61. Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

1.

**Regarding-Temporary Service counting for Pension.*

It has now been decided that temporary service or officiating service under the State Government when followed by permanency whether in the same or any other post should count in full for pension except in respect of--

(i) period of temporary service is non-pensionable establishment, and

(ii) period of service paid from contingencies.



The concession of counting officiating and temporary service in full for pension will be available to Government servants who are governed by the Old Pension Rules, or the Liberalized Pension Rules. [Notification No. 12928F...dated 4.9.1962. This has effect from 1.8.1962.]”

Chapter V relates to reckoning of service for pension. The petitioner's case do not fall under the aforesaid Chapter V.

Chapter VI-Conditions of Grant of Pensions. Under Section 1-Classification of Pensions petitioner's case is required to be examined under Rule 107(d) Retiring pensions vide Section v. The petitioner's case do not fall under the aforesaid provision.

12. The Bihar Pension Rules, 1950 is replaced by New Pension Scheme. Therefore, the Bihar Pension Rules, 1950 ceased to be in operation as on 01.09.2005. The applicability clause namely Rule 2 is very specific that Rules applied to all Government servant to whom Rules in the Bihar and Orissa Rules Code apply. The petitioners have not appreciated that status of Government servant prior to 01.09.2005 and they have been appointed subsequent to 01.09.2005, therefore, repealed Rules cannot be applied to such of those persons who have been appointed w.e.f. 01.09.2005. In other words, they are not entitled to seek any relief of applicability of Bihar Pension



Rules, 1950. Consequently, The Bihar Government Employees, Contributory Pension Scheme, 2005 which was churned out on 01.09.2005 is applicable to the petitioners with reference to their appointment read with Government status acquired by each of the petitioners.

13. Further, reading of New Pension Scheme, which was introduced on 01.09.2005, Old Pension Rules ceased to be inoperative with effect from 01.09.2005, in such event appellants whose services have been absorbed on 02.09.2008 in different departments and they had the status of government servant with effect from 02.09.2008, the date on which Old Pension Rules was not in existence in the eye of law. Therefore, extending Old Pension Rules is not warranted.

14. Perusal of the decision rendered in C.W.J.C. No. 4452 of 2012 decided on 22.12.2015, this Court has not taken note of the fact that appellants were holders of non-pensionable post till 01.09.2006 read with 02.09.2008, the date on which the Board was dissolved and appellants' services were absorbed in different departments read with applicability clause of Old Pension Rules. Similarly, in L.P.A. No. 716 of 2017, this Court has not taken note of the aforesaid statutory provisions governing pension subject under Bihar Pension Rules, 1950.



15. The learned counsels for the appellants, vehemently, submitted that similarly situated persons, who have been extended pension vide Resolution dated 14.09.2020 by the State of Bihar, therefore, there is a discrimination meted out two sets of class of persons. The same cannot be appreciated for the reasons that statutory Rules like Bihar Pension Rules, 1950 and applicability clause read with criteria for the purpose of seeking pension has not been dealt in the Resolution dated 14.09.2020. Moreover, Appellants were holder of non-pensionable post & they were governed by CPF (Pension). In other words, if an employee/government servant has been extended certain service or a monetary benefits, illegally, the same cannot be extended to similarly situated persons. In other words, illegality cannot be perpetuated as held by the Apex Court in the case of (I) ***R. Muthukumar & Others Vs. Chairman and managing director TANGEDCO & others*** reported in (2022) SCC online SC 151, decided on 07.02.2022. (II) ***Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja & Others*** reported in (2021) SCC Online SC 767.

16. Reading of the aforesaid Judgment, it is crystal clear that employees have been accommodated in extending certain benefits in the present case. Further, it is noticed that we



cannot bypass the criteria laid down in the Bihar Pension Rules, 1950 for the purpose of extending any benefit to the appellants under Bihar Pension Rules, 1950, unless and until facts of the case read with the criteria mentioned in the Bihar Pension Rules, 1950, the appellants are not entitled.

17. In view of these facts and circumstances, the appellants have not made out a case so as to interfere with the decision of the government read with the learned Single Judge order dated 20.11.2018.

18. Accordingly, all these appeals stand dismissed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2022
Transmission Date	

