

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11270 of 2017

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Tarni Singh S/o Late Sawaliya Singh, R/o Village P.O.- Dudhra, P.S.- Goraiyakothi, District Siwan at present retired labourer from work charge establishment irrigation mechanical sub-division electricity, West Champaran.

... .. Petitioner/s

Versus

1. The State \of Bihar
2. The Commissioner-cum-Secretary, Water Resource Department, Government of Bihar, Patna.
3. The Chief Engineer, Mechanical Division, Water Resource Department, Government of Bihar, Patna.
4. The Executive Engineer, Mechanical Division, Water Resource Department, Valmiki Nagar, West Champar
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bishnu Kant Dubey, Advocate
For the AG (Bihar)	:	Mr.Chaitanya Swaroop, Advocate
For the Respondent/s	:	Mr.A.C. to G.A.2

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 21-06-2023

Heard Mr. Bishnu Kant Dubey, learned counsel for the petitioner; Mr. Chaitanya Swaroop, leaned counsel for the Accountant General (Bihar) and the learned A.C. to G.A.2 for the State.

2. The present writ petition has been filed for inter alia following relief(s) : -

“For issuance of a writ in the nature of mandamus directing and commanding the respondents to make payment of pension, gratuity and underutilized leave salary (leave encashment) and other post retiral benefits and/or for issuance of a writ/order/direction for which the petitioner may be found legally entitled



to under the facts and circumstances stated hereinunder.”

3. The petitioner has claimed that he was under the Work Charge Establishment Irrigation Mechanical Sub-Division Electricity, West Champaran. He was appointed on the regular post by Memo No.2773 dated 19.08.1972 along with 13 other labourers in Gandak Yojna, Valmiki Nagar. The claim of the petitioner is also that he was working as government servant and his service book was opened by letter no.924 dated 17.06.2011. The petitioner was found absent from duty due to his illness from time to time, however, he was given benefit of pay revision including 6th Pay Revision. Petitioner superannuated from service w.e.f. 31.10.2011. The petitioner has further claimed that as per the Government Memo No.2636 dated 09.08.2011, the petitioner was taken in regular establishment, however, his service was regularized taking into consideration that the petitioner was engaged in Gandak Yojna, Valmiki Nagar on 19.08.1972.

4. In view of the above facts, the petitioner has claimed that he is entitled for retiral benefit including pension, in terms of Rules 59 of the Bihar Pension Rules as well as the Finance Department Memo No.1344 dated 04.02.1949.



5. Counter affidavit has been filed on behalf of respondent nos. 2 to 4. The respondents have denied to give benefit of pension to the petitioner because the petitioner was never taken into regular establishment since he had never performed his duty regularly because he was absent from the duty since 01.06.1980 to 03.07.1987 and 21.02.1988 to 13.03.1991. The State Government had regularized services of work charge establishment on different dates particularly 01.04.1977, 22.10.1984 and 11.12.1990. It is further stated that on 01.04.1977, the petitioner had not completed eligibility criteria of five years as per the government circulars, hence his service was not taken in the regular establishment on 22.10.1984, as such it is the admitted fact that the petitioner was not in government employment and the petitioner superannuated on 31.10.2011 and the claim of the petitioner is not acceptable, in view of the notification no.10710 dated 17.10.2013 because the petitioner has not fulfilled the eligibility criteria laid down for taking in regular establishment. The petitioner again claimed for pensionary and the post retiral benefit. The counter affidavit contains notification no.10710 dated 17.10.2013 with respect to work charge employees. The circular has taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Jaswant Singh & Ors. Vrs. The Union*



of India & Ors. reported in **(1979) 4 SCC 440** and in the said judgment, the Hon'ble Apex Court has held as follows : -

“A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to works. The pay and allowances of employees, who are borne of a work-charged establishment, are generally shown as a separate sub-head of estimated cost of the work.”

6. The circular provides for regular satisfactory service rendered by the work-charged employees at least for five years.

7. In the present case, the petitioner has admitted that he was absent from duty due to his illness. Recently, Hon'ble Full Bench of this Court in the case of ***Smt. Amrika Devi & Ors. Vrs. The State of Bihar and Ors.*** reported in **(2019) 4 PLJR 354** has held that such period of work charge tenure could be added for making the service of an employee, who has been regularized to qualify for pension. For such period of work charge tenure, the State Government has provided to count one year for every five year of service rendered under work charge establishment.

8. The facts which have come out from the averments made in the case as well as the counter affidavit and the supplementary counter affidavit that the service book of the petitioner was opened on 17.06.2011 and the same has not been brought on record along with the records of this case.



9. Considering the formula adopted by the State Government as well as the same has been approved by the Rule and the circular has been adopted by the Hon’ble Full Bench of this Court, the petitioner, if so advised, may file a detailed representation before the Executive Engineer, Mechanical Division, Water Resource Department, Valmiki Nagar, West Champaran (respondent no.4) and the Executive Engineer, Mechanical Division, Water Resource Department, Valmiki Nagar, West Champaran is directed to verify the records including service book of the petitioner in view of the law laid down by this Hon’ble Court in the case of *Smt. Amrika Devi & Ors. Vrs. The State of Bihar & Ors.* reported in *(2019) 4 PLJR 354*.

10. The representation of the petitioner must be disposed of within a period of six weeks from the date of filing of the said representation.

11. The preset writ petition is accordingly disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	
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