IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11671 of 2017

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1.1. Smt. Kiran Devi (widow) wife of Ram Prakash, Resident of Mohalla - Mahabir Nagar, 70 feet Road, Saristabad, behind Oil Deport (Shiv Mandir), P.O. - Anishabad, P.S. - Beure, District - Patna, 800002.

1.2. Ashish Kumar (Son) Son of Ram Prakash, Resident of Mohalla - Mahabir Nagar, 70 feet Road, Saristabad, behind Oil Deport (Shiv Mandir), P.O. - Anishabad, P.S. - Beure, District - Patna, 800002.

1.3. Jyoti Devi (Daughter) Wife of Deepak Kumar, Resident of Bikram, P.S. Bikram, District - Patna, PIN - 801104.

1.4. Shilpa Kumari (Daughter) wife of Rahul Gupta, Resident of Mohalla - Mahavir Nagar, Block 01, Tel Depo, 70 feet Road Saristabad, P.O. - Anishabad, P.S. - Beure, District - Patna, 800002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Vikash Bhawan, New Secretariat, Patna.
3. The Director, Panchayati Raj Department, Govt. of Bihar, Vikash Bhawan, New Secretariat, Patna.
4. The Managing Director, Bihar Panchayat Raj Finance Corporation, Vikash Bhawan, New Secretariat, Patna.
5. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
6. The Branch Manager, (Pension and Group Scheme), Life Insurance Corporation of India, Patna Division, Jeevan Prakash, Frazer Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shambhu Nath, Advocate
For the State	:	Mr. K.P.Gupta, GP-10
		Mr. Virendra Kaur, AC to GP-10
For the LIC	:	Dr. Ratan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 12-07-2023

Heard Mr. Shambhu Nath, learned counsel

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appearing on behalf of the petitioner; Mr. K.P. Gupta, learned GP-10 along with Mr. Virendra Kaur, learned AC to GP-10 and Dr. Ratan Kumar, learned counsel appearing on behalf of the Life Insurance Corporation.

2. The writ petition was filed by the petitioner Late Ram Prakash who was the employee of the dissolved corporation, namely, Bihar Panchayat Raj Finance Corporation and later on taken into regular establishment of the Panchayati Raj Department on 01.01.2001. The writ petition has been filed in the year 2017. During the pendency of the writ petition, after the death of the original petitioner on 06.07.2020, his wife has been substituted. The petitioner is aggrieved for having been denied leave encashment for 300 days and benefit of 5th and 6th Pay Revision payable to the petitioner in the regular establishment of the Department. The petitioner has also claimed that total amount accrued on the basis of Master Policy No. GIC 27116 has not been paid. The petitioner is aggrieved that similarly situated employees who were the employees of the erstwhile corporation and were later on taken into regular establishment on similar terms and conditions have been granted all the benefits and the petitioner has been denied the said benefits.

3. The petitioner in support of his claim has

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brought on record certain documents by way of rejoinder to substantiate her claim that similarly situated employees like husband of the petitioner have been granted all the benefits.

4. *Per contra*, learned counsel for the State submitted that the petitioner was an employee of the Board / Corporation and in view of the Letter No. 93214 dated 27.02.2012 issued by the then Rural Development Department, it has been informed that the employees of the Corporation are not Government employees, hence benefits of payment of gratuity, leave encashment and pension are not applicable to the employee of the Corporation. He further submits that the petitioner being the employee of the Corporation is only eligible for payment of Insurance under the Master Policy No. GIC 27116 with the LIC of India. The petitioner's application for payment of the Insurance amount received in the Department has been sent to the Branch Manger, LIC of India, Divisional Office, Frazer Road, Patna vide Letter No. 8149 dated 20.09.2017 for final payment of amount of Group Saving – cum – Insurance Scheme.

5. Heard the parties.

6. Late Ram Prakash was posted on temporary basis in the regular establishment of the Panchayati Raj Department on the post of typist. The petitioner has claimed the

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benefits which have been provided to the similarly situated employees.

7. At this stage Rule 58 of the Bihar Pension Rules, 1950 which deals with the conditions of the service of a Government servant to qualify for pension may be referred to and the same is quoted hereinbelow:

> "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.

Rule 59 of the Bihar Pension Rules, 1950 is quoted hereunder:

> "Rule 59:- The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (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.

8. Rule 59 of the Bihar Pension Rules, 1950 provides that in certain cases even though the conditions are not fulfilled, the Government may provide that the service rendered by a Government servant shall count for pension. Under this provision the Government came out with Memo No.

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Pen1024/69/11779 F., dated 12.8.1969 which is quoted hereinbelow for ready reference:

> "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.]"

9. Reading of the above provisions clearly provide that even if a person has worked in a temporary capacity and has not been confirmed, if his service on any post is continuous and is for more than 15 years, then it may be considered as pensionable under Rule 59 of the Bihar Pension Rules, 1950.

10. Taking into consideration the material on record, Rules 58 and 59 of the Bihar Pension Rules, 1950 and the Memo dated 12.8.1969, the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar is directed to make payment of all the dues admissible to the petitioner

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including pension. The Additional Chief Secretary must also ensure to maintain equity with the similarly situated employees who have been granted the benefit within a period of six weeks from the date of production of this order. The payment must be paid along with admissible interest till the date of payment.

11. The writ application, accordingly, stands disposed of.

(Purnendu Singh, J)

Mantreshwar/-
Minu/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.07.2023
Transmission Date	N.A.

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