

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8701 of 2021

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Krishna Prasad son of late Triveni Prasad resident of Village - Jamalpur, Post
Office - Nyamhampur, Police Station- Barahara, District- Bhojpur at Ara.
... .. Petitioner/s

Versus

1. The State of Bihar
2. The Engineer in Chief, Rural Engineering Organization and Panchayat Raj
Rural Development Department, Government of Bihar, Patna.
3. The Secretary, Rural Engineering Organization and Panchayat Raj Rural
Development Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Engineering Organization, Works
Circle, Patna.
5. The Executive Engineer, Rural Engineering Organization, Danapur, Patna.
6. The Assistant Engineer, Rural Engineering Organization, Works Sub Circle
Bikram, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ramchandra Singh, Advocate Mr. Shankar Kumar, Advocate Mr. Radha Krishna, Advocate Mr. Jitendra Singh, Advocate
For the Respondent/s	:	Mr. Manish Kumar, AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 07-10-2023

Heard Mr. Ramchandra Singh, learned counsel
appearing on behalf of the petitioner and Mr. Manish Kumar,
learned AC to AAG 6 for the State.

2.In continuation of order dated 18.08.2023 by which
specific direction was given to the respondents and in spite of
adjournments, have not been able to differentiate between the
daily wagers, with respect to employees who have been



performing their duties under a regular government establishment and those daily wagers, who were engaged under certain temporary scheme and with the lapse of scheme as per the terms of engagement, they lost their services/engagement.

3. Present is the case in which the facts as stated in the writ petition, counter affidavit and supplementary counter affidavits filed on behalf of the State, the petitioner was being engaged as daily wager by Executive Engineer, Rural Works Department, Works Circle, Danapur under regular establishment. The said fact has been admitted by the respondent in paragraph nos.7, 8, 9 and 10 of the supplementary counter affidavit dated 13.07.2023 filed on behalf of respondents and the same are reproduced hereinafter:-

“7. That it has already been submitted before the Hon’ble Court vide earlier counter affidavit that the petitioner was initially engaged as daily wages employee on 23.08.1982 and later on in compliance of the order passed by the Hon’ble Court in CWJC No.6661 of 1998 the petitioner was absorbed temporarily under regular establishment subject to certain conditions on the pay scale of 2550-55-260-60-3200 vide office order having Memo No.857 dated 13.12.2021 issued under the signature of the Superintending Engineer, Rural Works Department, Works Circle, Patna.

8. That it is very humbly submitted that the said appointment of the petitioner was not found to be in consonance with the Resolution No.5940 dated 18.06.1993 issued by the Personal and Administrative Reforms Department, Government of Bihar, Patna so in the light whereof the appointment of the petitioner was cancelled vide



departmental letter No.-178 dated 24.01.2003.

9. That it is further submitted that the petitioner challenged the letter No.178 dated 24.01.2003 in the Hon'ble Court by way of CWJC No.2088 of 2003 which was disposed of vide order dated – 27.02.2004.

10. That the name of the petitioner was placed before the district level selection committee under chairmanship of the District Magistrate-cum-Chairman, District Level Selection Committee for consideration of absorption-regularization which was considered by the committee in its meeting held on 23.06.2014 and recommendation was made for regularization of service of the petitioner under Group-D in the light of the Resolution No.639 dated 16.03.2006 issued by the Personal and Administrative Reforms Department, Govt. of Bihar under specific condition that the service rendered by the petitioner as daily wager shall not be counted for any purpose.”

4. In the aforesaid supplementary counter affidavit, a reference of resolution No.5940 dated 18.06.1993 has been made in paragraph no.8 in support of the fact that the appointment of the petitioner was not found to be in consonance with the above-mentioned resolution and, as such, in light of the said resolution, the appointment of the petitioner was cancelled by department vide letter No.178 dated 24.01.2003.

5. The service particular of the petitioner and others has been mentioned in Annexure B to the said counter affidavit, which is the minutes of the meeting of District Level Selection Committee under the Chairmanship of the District Magistrate-cum-Chairman, dated 23.06.2014, and in the said meeting,



recommendation was made for regularization of service of the petitioner under Group D in light of Resolution No.639 dated 16.03.2006, issued by the (present General Administrative Department) / Personal and Administrative Reforms Department, Government of Bihar with a condition that the service rendered by the petitioner as daily wager shall not be counted for any purpose. The petitioner was given an opportunity by the Superintending Engineer, Rural Works Department, Work Circle, Patna for providing service particulars and vide memo no. 1128 dated 28.08.2014, appointment letter was issued to the petitioner with a condition that service spent/rendered under daily wages shall not be computed/calculated for any purpose. The letter of appointment has been brought on record by way of Annexure C to the counter affidavit. Subsequently, the services of the petitioner was regularized and he accepted the terms and conditions of the said appointment letter. The petitioner, being ignorant of the far-reaching consequences of the conditions mentioned in the appointment letter, had raised no objection to the terms and conditions contained in the letter of appointment.

6. The State Government vide resolution No.639 dated 16.03.2006 came up with a policy decision to regularize



the service of those daily wagers, who had worked for minimum 240 days by the cut-off date 11.12.1990 and they were absorbed under regular establishment under certain terms and conditions as laid down in the said resolution.

7. Learned counsel appearing on behalf of the petitioner submits that petitioner was engaged on 23.08.1982 as Group D employee on daily wages as it would appear from Annexure P/1. The petitioner having completed 240 days of service as daily wage worker was not regularized and, as such, he preferred CWJC No.6661 of 1998 and pursuant to the direction of this Court, the petitioner was absorbed temporarily under regular establishment on the post of Chaprashi/Chaukidar, subject to certain conditions in the pay scale of Rs.2550-55-260-60-3200 in the office of Rural Engineering Organization, Works Sub-Division, Bikram vide memo No.857, dated 13.12.2002. Thereafter, vide resolution No.5940 dated 18.06.1993, the appointment of the petitioner allegedly was not found to be in consonance with the above-mentioned resolution and, as such, in light of the said resolution, the appointment of the petitioner was cancelled by department letter No.178 dated 24.01.2003.

8. The petitioner, being aggrieved by the letter No.178 dated 24.01.2003 of Engineer-in-Chief-cum-Additional



Commissioner-cum-Special Secretary, Rural Development Department, Rural Engineering Organization, Government of Bihar by which the regularization which was granted to the him vide memo no.857 dated 13.12.2002 was cancelled, preferred CWJC No.2088 of 2003, which was disposed of with following direction and order:-

“Considering the facts and circumstances of the case, on this limited question, this application is allowed. The order impugned as contained in Annexure-1 and its consequential orders are set aside.

The authorities, however, if so advised, may proceed in accordance with law.”

9. Learned counsel further submiteed that in compliance of the order of this Court, the Secretary, Rural Engineering Organization and Panchayati Raj, Rural Development Department, Government of Bihar, Patna vide letter no.81 dated 31.01.2005 issued show cause to the petitioner as to why his appointment should not be cancelled from the date of issuance of the appointment letter having deemed it to be *void ab initio*. However, learned counsel makes it clear that in spite of the show cause having been issued to the petitioner and other similarly situated employees, the services of the petitioner was recommended to be regularized vide memo no.1128 dated



28.08.2014 on the recommendation of the District Level Appointment Committee constituted in terms of Rule 54 of Bihar Service Code in the P.B. 1/5200-20200/- Grade pay-Rs.1800/- against the vacant post of Group D.

10. Learned counsel for the petitioner next submitted that the petitioner is aggrieved by the decision of the appointment committee, whereby the computation of qualifying service of the petitioner has been wrongly calculated from the date of his regularization, i.e., 28.08.2014 till the date of his superannuation on 31.08.2019 and, as such, the petitioner has not qualified for the pensionary service. Learned counsel in support of his contention submits that the action of the respondents by not considering the entire length of service of the petitioner having engaged as a daily wager and worked for more than 240 days with effect from 23.08.1982 is not in accordance with law. In support of his claim, learned counsel has referred to the provisions contained in Rule 73 of the Bihar Service Code to make it clear that the minimum retirement age of the government employee is 60 years. In these backgrounds, learned counsel submits that the qualifying pensionary service has been clarified to be 10 years and 15 years vide Appendix 6 of Bihar Pension Rules, 1950 in sub-clause 18, which is



reproduced hereinafter:-

“18. न्यूनतम पेंशन प्रदायी सेवा— वर्तमान नियम के अनुसार स्थायी सरकारी सेवक/अस्थायी सरकारी सेवक के लिए क्रमशः न्यूनतम पेंशन प्रदायी सेवा 10 एवं 15 वर्ष निर्धारित है। अब निर्णय लिया गया है कि दोनों श्रेणी के लिए 10 वर्ष की न्यूनतम पेंशन प्रदायी सेवा मानी जायगी।”

11. Referring to the above provision of Clause 18, learned counsel submits that Rule 58 of Bihar Pension Rules, 1950 he submitted that the same deals with condition of service of government servant to qualify for pension may be referred to and the same is reproduced hereinbelow:-

“58. The service of a Government servant does not qualify for pension unless in 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.”

12. Learned counsel further proceeded to submit that based on the material available on record as well as statements made in the counter affidavit and perusal of Rules 58 and 59 of the Bihar Pension Rules, 1950 as well as memo dated 12.08.1969, the petitioner is entitled for pension by taking



into consideration his initial date of engagement as 23.08.1982.

13. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner's service was regularized and the said fact has also been stated in the counter affidavit as well as in the supplementary counter affidavit filed on behalf of the State-respondents. However, he submitted that the petitioner is not entitled for pension, as he had not completed 10 years of qualifying service since he was regularized in the year 2014 and superannuated on 31.08.2019. He further submitted that contention of the petitioner that his entire service period from the date of initial joining, i.e., 23.08.1982 till the date of his superannuation cannot be considered in light of Rules 58 and 59 as well as in light of Memo no.639 dated 16.03.2006. Learned counsel emphasized that even according to the terms and conditions of appointment to which petitioner has never raised any objection, the claim of the petitioner, as claimed in the writ petition, is fit to be rejected. Learned counsel in these backgrounds proceeded to clarify that since the services of the petitioner were regularized in the year 2014, he is entitled for pension under new pension Rules, if at all, the petitioner's case is considered to be pensionable after treating the entire length of service from the



year 1982 from the date of initial appointment. Learned counsel referred to paragraph no.29 of supplementary counter affidavit filed on behalf of the respondent nos.2 to 6 which is reproduced hereinbelow:-

“29. That it would also be pertinent to bring to the notice of the Hon’ble Court that the new pension scheme has already been implemented vide Resolution No.1964 dated 31.08.2005 according to which the services of the employees whose appointment/absorption/regularization have been made on or after 01.09.2005 shall not be covered under old pension scheme and pension shall not be payable to them.”

14. Heard the parties.

15. Having dealt with the brief facts of the case as well as submissions made on behalf of respective parties, as has been mentioned in the above paragraphs of this order, the question for consideration before this Court is, as to whether, on the basis of admitted facts that the petitioner was engaged as daily wager on 23. 08.1982, and since then continuously work was being taken from him till the date of his regularization on 28.08.2014, i.e., he worked continuously for more than 32 years in the different offices of Rural Works department and finally superannuated on 31.01.2019, from the post of *Janjir Vahak*, he is entitled for pension after attaining the age of superannuation,



i.e., 60 years in accordance with the provisions of Rules 58 and 59 of the Bihar Pension Rules, 1950, read with Bihar Gazette dated 23.09.2009?

16. Learned State counsel has relied upon a judgment of the Full Bench of this Court rendered in the **State of Bihar & Anr. Vs. Bhagwan Singh (since dead) [2014(4) PLJR 229]** but the same would not be applicable in the facts of the present case, as in the said case, the question which was required to be decided by the Full Bench was related to Rules 56 and 61 of the Bihar Pension Rules, 1950, with regard to qualifying/service rendered on daily wages followed by regularization, and entitlement to pension by considering the period of service rendered in the work charge establishment. The Full Bench referred to Rules 56 and 61 of the Bihar Pension Rules, 1950 and finally held that the service rendered by the petitioner of that case as daily wager under the Executive Engineer, Tubewell Division, Gaya, cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. However, in the present case, the “Minutes” of the meeting which has been annexed as Annexure B to the counter affidavit confirms the



fact that the service of the petitioner was taken on the vacant sanctioned post and his absorption was made after the petitioner having fulfilled all the requisite criterias for being appointed as *Janjir Vahak*. Consideration of Rules 58 and 59 of Bihar Pension Rules, 1950 was not the subject matter before the Full Bench and, as such, judgment was passed entirely on different facts of the case, whereas in the present case, the petitioner was engaged as daily wager on sanctioned post.

17. The State Government vide resolution No.639 dated 16.03.2006 came up with a policy decision to regularize the service of those daily wagers, who had worked for minimum 240 days by the cut-off date 11.12.1990 and they were absorbed under regular establishment under certain terms and conditions as laid down in the said resolution.

18. In the supplementary counter affidavit dated 13.07.2023, a reference to resolution No.5940 dated 18.06.1993, has been made in paragraph no.8, in support of the fact that the appointment of the petitioner was not found to be in consonance with the above-mentioned resolution and, as such, in light of the said resolution, the appointment of the petitioner was cancelled by department vide letter No.178 dated 24.01.2003.



19. The Secretary, Rural Engineering Organization and Panchayati Raj, Rural Development Department, Government of Bihar, Patna vide letter no.81 dated 31.01.2005 issued show cause to the petitioner as to why his service should not be cancelled from the date of issuance of the appointment letter having deemed it to be *void ab initio*. However, later the services of petitioner and other similarly situated employees were recommended to be regularized vide memo no.1128 dated 28.08.2014, on the recommendation of the District Level Appointment Committee, constituted in terms of Rule 54 of Bihar Service Code on the P.B. 1/5200-20200/- Grade pay-Rs.1800/- against the vacant post of Group D.

20. The respondents have calculated the service of the petitioner from the date of regularization, i.e., 28.08.2014 treating it to be the date of appointment and have admitted that the petitioner had superannuated on 31.08.2019 and have completed only five years of service, which is less than the qualifying period of 10 years for the pensionary service. The respondents had not considered the entire length of service of the petitioner who had worked as a daily wage for more than 240 days with effect from 23.08.1982, and has rendered service till the date of his superannuation after attaining 60 years of age.



The provisions of Rule 73 of the Bihar Service Code makes it clear that the minimum retirement age of a government employee is 60 years. It is thus evident that the petitioner had completed the qualifying pensionary service of 10 years, in accordance with the provisions of Appendix 6 of Bihar Pension Rules, 1950 in sub-clause 18, which is reproduced hereinafter:-

“18. न्यूनतम पेंशन प्रदायी सेवा— वर्तमान नियम के अनुसार स्थायी सरकारी सेवक/अस्थायी सरकारी सेवक के लिए क्रमशः न्यूनतम पेंशन प्रदायी सेवा 10 एवं 15 वर्ष निर्धारित है। अब निर्णय लिया गया है कि दोनों श्रेणी के लिए 10 वर्ष की न्यूनतम पेंशन प्रदायी सेवा मानी जायगी।”

21. The prescription of cut off date for absorption into regular service and to not count the service rendered before regularization, for computation of qualifying service, has no rational basis and same is violative of Article 14 of Constitution of India. In present case, the petitioner has served for 32 years before being absorbed in regular service on 28.08.2014.

22. With respect to the issue in the matter of computation of qualifying service, for the period of service rendered by the employee as work charged, the Hon'ble Supreme Court in the case of ***Prem Singh v. State of Uttar Pradesh & Ors. Reported in (2019) 10 SCC 516***, was seized with this question for determination, wherein, *inter alia*, the



Court made significant observation in Paragraph nos. 31 and 36, which is reproduced hereinbelow:

“31. In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularised. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.

36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees....” (emphasis supplied)

23. The case of Prem Singh (supra) relates to a work charged employee, who, by their very nature of employment do



not continue for long since their employment ends with the project, when juxtaposed with the nature of the employment of the present petitioner, who rendered services since 23.08.1982 as daily wager till his regularization on 28.08.2014 and continued to discharge his service, uninterrupted, up until his superannuation on 31.08.2019. The case of the petitioner, who had worked in regular establishment of the Government on sanctioned post is at a much better footing than a work charged employee. The Apex Court in the case of **Uday Pratap Thakur & Anr. Vs. The State of Bihar (Civil Appeal No.3157 of 2023)** has clarified, taking into consideration the circulars of the State Government, the period of service as work charged employee for calculation of pensionable service. In absence of explanation to deny similar benefits to a daily wage employees, who, as in the present case, has given 37 years of his life in the service of the State Government, is unjust and arbitrary.

24. The fact of the present case is covered by a Division Bench of this Court in the case of the **Registrar General, Patna High Court Versus Ram Vyas Dubey and Ors. (LPA No.198 of 2016 arising out of CWJC No.15761 of 2013)** wherein a similar question was under consideration. The Division Bench, after proper analysis of the facts of the said



case in paragraph 9, has taken note of the provisions of Rule 58 and 59 as well as memo No.Pen1024/69/11779 F., dated 12.8.1969 and held that reading of the provisions of Rules 58 and 59 clearly provide that even if a person has worked in a temporary capacity and has not been confirmed, his service on any post is continuous and is for more than 10 years, then it may be considered as pensionable under Rule 59 of the Bihar Pension Rules, 1950. It would be relevant to quote paragraph nos.9 to 12 of the said judgment which are reproduced hereinbelow:-

“9. Having heard learned counsel for the parties and having perused the material on record, the facts not in dispute are that the writ petitioner was appointed as Daily Wage (Literate) Mazdoor on 18.4.1985 and was regularized on 1.5.1988. In view of the order dated 7.6.1994 he was designated as Assistant on ad-hoc basis; however, the said order being recalled subsequently, the writ petitioner reverted back as a Daily Wage Employee of the Court. He was later selected and appointed as Ex-Cadre Assistant vide memo no. 2675 dated 18.3.2004 and finally retired from service on 31.10.2010.

10. It is the categorical case of respondent no. 2-appellant that a minimum of 10 years of service as a regular employee is required to qualify for pension and the same has been fixed by the Government of Bihar. 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.

11. 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. 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.]”

12. 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.”

25. It has been informed by learned counsel appearing on behalf of the State that the State has not preferred any SLP against the said judgment of this Court.

26. The writ petitioner had rendered 32 years as daily wager and only 5 years as permanent employee. After the services of the petitioner had been regularized on 28.08.2014, he became a public servant like any other servant. To deprive him of the pension since his engagement on 23.08.1982 on daily wages and thereafter his regularization on 28.08.2014, is not only unjust and inequitable but is hit by the vice of arbitrariness.

27. In this background, I conclude that petitioner’s



initial appointment before regularization will be the date on which employee takes charge of the post. Once the entire service of daily wage is to be counted as qualified service then his date of appointment will relegate back to his initial date of engagement i.e 23.08.1982 and he cannot be ousted from pension scheme by applying the date of regularizaition i.e 28.08.2014, which is evident after the New Pension Scheme which came into force on 01.09.2005 in the State of Bihar.

28. The discriminatory treatment meted out to retired persons while granting pension was not approved by the Apex Court the case of *D.S. Nakara v. Union of India* reported in *(1983) 1 SCC 305*. A careful reading of the instructions of New Pension Scheme would show that the same is applicable to entrants on the basis of offer of appointment issued to them. The New Pension Scheme cannot be made applicable to petitioner since he cannot be considered a new entrant. It is held that covenant contained in offer of regular appointment to petitioner cannot take away right vested in him under Bihar Pension Rules, Bihar Service Code and the petitioner will be governed by Old Pension Rules and the Contributory Pension Fund Scheme will not apply. Accordingly, respondents are directed to treat the whole period of service of the petitioner as



qualified service for pension because according to clarification issued on New Contributory Pension Scheme will be applicable to all employees who have been regularized then, because there is nothing in Pension Rules which requires “the qualifying service to be computed from date of the employee makes contribution towards CPF fund or from date of his confirmation.” Rather, qualifying service is to be counted in terms of provision of Rule 58 and 59 of Bihar Pension Rules, 1950. The petitioner is accordingly entitled for pension under Old Pension Scheme and for other benefits, as is applicable to government employees.

29. The respondent authorities concerned are directed to consider the case of the petitioner in light of the observations made above.

30. Accordingly, the writ petition is allowed in terms of discussions made hereinabove.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.10.2023
Transmission Date	NA

