

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3387 of 2023

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Boudhu Rai S/o Late Mahabir Rai, Resident of Village- Balha, P.O. - Balha,
P.S. - Rajnagar, District - Madhubani, retired as Peon under Executive
Engineer, Western Embankment Division, Nirmali, Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Government of Bihar,
Patna.
3. The Engineer-in-Chief (Flood Control and Water Drainage), Water
Resources Department, Anisabad, Patna.
4. The Chief Engineer, Flood Control and Water Drainage, Water Resources
Department, Birpur, Supaul.
5. The Superintending Engineer, Eastern Koshi Embankment Circle, Saharsa.
6. The Executive Engineer, Western Embankment Division, Nirmali, Supaul.
7. The Accountant General, Bihar, Bir Chand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Anju Jha, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
		Mr. Rewti Kant Raman, AC to SC-11
For the A.G.	:	Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 19-07-2023 Heard Mrs. Anju Jha, learned counsel appearing on
behalf of the petitioner, Mr. Vikash Kumar, learned SC-11
assisted by Mr. Rewti Kant Raman, learned AC to SC-11
appearing on behalf of the State and Mr. Vivekanand Kumar,
learned counsel for the Accountant General, Bihar.

2. The present application has been filed for issuance



of writ of mandamus for commanding respondents to grant and make payment of post retiral benefits of pension, gratuity, leave encashment, group insurance etc. in old pension scheme after quashing paragraph no. 9 of office order contained in Memo No. 277 dated 07.02.2020 contained in Annexure 4 of the writ petition.

3. The representation of the petitioner dated 29.03.2000 was taken into consideration and the petitioner was granted minimum time scale pay in the pay scale of Rs. 2550-3200 along with allowances and his pay was fixed at Rs. 4149/- in light of C.W.J.C. No. 7825 of 1995, wherein the petitioners of that case were granted minimum time scale w.e.f. date of filing of writ application.

4. The petitioner was transferred to the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul under Water Resources Department vide Letter No. 1251 dated 13.10.2001. The petitioner was absorbed in the regular establishment on sanctioned vacant post of Peon in the pay scale of Rs. 18000/- in Level-I in the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul under Water Resources Department, by the office order contained in Memo NO. 277 dated 07.02.2020 issued by Chief Engineer, Flood



Control and Water Drainage, Water Resources Department, Birpur (Annexure 4). The petitioner joined on the post of Peon in regular establishment on 11.02.2020 which finds reference in Letter No. 69 dated 11.01.2021 of the Chief Engineer and intimation was made to the petitioner vide Memo No.91 dated 13.01.2021.

5. The petitioner had superannuated on 30.09.2022 from the post of peon in Regular Establishment after attaining the age of 60 years from the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul. The main contention is with respect to paragraph no.9 of Memo No. 277 dated 07.02.2020 issued by Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Birpur (Annexure-4), wherein it is mentioned that the petitioner would be entitled for Contributory Pension Scheme effective from 01.09.2005.

6. Learned counsel appearing on behalf of the petitioner submitted that petitioner was appointed as daily wage employee on 08.08.1981 on post of Chowkidar in the office of Ganga Soan Flood Control Division, Digha, Patna under Water Resources Department and continued in service till 13.10.2001 and in support of his claim petitioner refers to the statement of



daily wages employees of the said Division as would appear from Letter No.672 dated 24.09.1991 of the Executive Engineer, Ganga Sone Flood Control Division, Digha, Patna a communication made by him to the Chief Engineer, Water Resources Department, Sone Bhawan, Patna. The Chief Engineer in response vide Letter No. 729 dated 03.09.1991 had directed for absorption of daily wages employees. Name of petitioner finds place at Serial No. 38 of Letter No. 672 dated 24.09.1991 (Annexure-1).

7. It is further submitted that due to inaction on part of respondent authorities in absorbing the daily wage employees, the petitioner had filed C.W.J.C. No. 1724 of 1998 which was disposed of on 02.09.1999 with a direction to the petitioner and others to file representation before the competent authority for regularization of their services or grant of minimum time scale of pay which would be disposed of within three months from the receipt of representation. Thereafter, the petitioners filed LPA NO. 1236 of 1999, wherein by order dated 28.07.2000, the order of single judge dated 02.09.1999 was upheld. Vide Memo No. 4809 dated 26.12.2000 (Annexure 2), the Chief Engineer, Water Resources Department, Patna, disposed of the representation of the petitioner dated 29.03.2000 by holding that



the petitioner deserves to be granted minimum time scale pay in the pay scale of Rs. 2550-3200 along with allowances and accordingly his pay was fixed at Rs. 4149/-, from the date of filing of the writ petition in light of order passed in C.W.J.C. No. 7825 of 1995 in which case similarly situated employee was granted minimum time scale w.e.f. date of filing of writ application.

8. The brief facts of the case is that the petitioner was transferred to the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul under Water Resources Department vide Letter No. 1251 dated 13.10.2001 and the last pay certificate of petitioner was issued by the same letter (Annexure 3). The petitioner was engaged on daily wage basis w.e.f. 08.08.1981 till 22.01.1981. After 22.01.1981, the petitioner was granted the minimum time scale of pay of Rs. 2550 in the pay scale of Rs. 2550-3200 in work charge establishment. After nearly 39 years of service, the petitioner was absorbed in the regular establishment on sanctioned vacant post of Peon with the initial pay scale of Rs. 18000/- in Level-I in the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul under Water Resources Department, by the office order contained in Memon NO. 277 dated



07.02.2020 issued by Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Birpur (Annexure 4). The petitioner joined on the post of Peon in regular establishment in the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul under Water Resources Department on 11.02.2020 which was duly confirmed by the Chief Engineer vide Letter No. 69 dated 11.01.2021 and the petitioner was intimated same vide Memo No. 91 dated 13.01.2021 of Executive Engineer (Annexure-6). Petitioner had superannuated on 30.09.2022 from the post of Peon in Regular Establishment after attaining the age of 60 years from the office of Executive Engineer, Western Embankment Division, Nirmali, Supaul, vide Letter No. 1204 dated 30.09.2022 of the Executive Engineer (Annexure 7).

9. Learned counsel submitted that the State Government has issued several letters/guidelines from time to time for grant of pension/family pension to the work charged employee/ their dependents, by taking into account the period spent as the work charged employee followed by absorption in the regular establishment as qualifying service for the purpose of pensionary benefits, as would be evident from the Finance Departments Letter NO. Finance(27) Pen Ko-91/04-1393 dated



31.02.2004 (Annexure 8). From perusal of Finance Departments Letter No. Finance (27) Pen Ko-91/04-1393 dated 31.03.2004 (Annexure 8), it is apparent that work charged employee who had worked under work charged establishment for more than 5 years acquired eligibility for being absorbed in regular establishment.

10. Learned counsel for the respondent/s submitted that the service of the petitioner is less than five years, so pension/ gratuity is not admissible as per rule.

11. Taking into consideration the materials on record and the fact that the petitioner, who was appointed on 08.08.1981 on daily wage basis, was granted minimum time scale pay under work charged establishment in 1998 (i.e. after 17 years of service). Thereafter, on 07.02.2020 the petitioner was absorbed in Regular Establishment from work charged establishment (i.e. after serving for more than 21 years in work charged establishment. Admittedly, the petitioner had rendered service for more than 40 years as daily wager/ work charged employee and was finally taken into regular establishment though with delay for which petitioner is not responsible. The Principal Secretary, Water Resource Department, Government of Bihar is directed to make payment of all the due admissible to



the petitioner including pension within a period of six weeks from the date of production of this order in accordance with law. The payment must be paid along with admissible interest till the date of payment.

12. The writ petition, accordingly, stands disposed of.

(Purnendu Singh, J)

Niraj/Nilmani

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