

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL REVIEW No.54 of 2020

In

Letters Patent Appeal No.1738 of 2017

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1. The State of Bihar
 2. The Principal Secretary, Department of Minor Irrigation, Bihar, Patna
 3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
 4. The Deputy Secretary, Department of Minor Irrigation, Bihar, Patna

... .. Petitioner/s

Versus

1. Shree Bhgawan Singh, Son of Late Pradip Singh, resident of Village- Daudpur, P.o.- Kalpa, P.s.- Jehanabad, District- Jehanabad
2. Paramhansh Singh, Son of late Janki Singh, resident of Village- Basouri, P.o.- Bagwa, P.s.- Udwantnagar, District- Bhojpur, Ara
3. Shree Niwas Singh, son of late Indradeo Singh, resident of Village- Dharupur, P.o.- Dharupur, P.s.- Bikramganj, District- Rohtas

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Parijat Saurav (AC To AAG-10)
For the Opposite Party/s : Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-09-2023

The review is filed against the judgment of a



Division Bench which permitted the entire period spent on work-charged establishment by the writ petitioners; who were later regularized, to be counted for the purpose of pension. The said finding was against the very decision leading to their regularization, which provided only one year for every five years spent on work-charged establishment, for the purpose of enabling the regularized employees to get pension; along with the further deficient years, if any, also being conceded. The Division Bench found that the rider fixed by the State Government in the memorandum dated 22.08.2014 would violate Article 14 of the Constitution of India. Hence, the entire period spent on work-charged establishment was directed to be reckoned as regular service for the purpose of pension.

2. The review is filed on the ground that even prior to the decision of the Division Bench, a Full Bench of this Court had held otherwise; which was not brought to the notice of the Division Bench.

3. We heard learned Counsel Mr. Parijat Saurav, AC to AAG-10 and learned Counsel Mr. Sanjay Kumar for the respondents. The learned counsel for the respondents, who were the writ petitioners/appellants pointed out that the issue was settled even prior to the Full Bench by a three Judge Bench of



the Hon'ble Supreme Court in ***Prem Singh v. State of U.P.; (2019) 10 SCC 516***. The impugned judgment, relied on the cited decision to allow the prayer of the appellants. The learned Counsel also cautioned us from traversing beyond the limits of a review as provided under Order 47, Rule 1 of the Civil Procedure Code (for brevity "C.P.C."). Learned counsel specifically read over to us the effect of a subsequent decision of a higher Court in the consideration of a review from Order 47, Rule 1.

4. The learned Government Advocate, on the other hand points out that the Full Bench decision was approved by the Hon'ble Supreme Court in a Civil Appeal by a detailed judgment, as is produced at Annexure-4 along with I.A. No. 2 of 2023 filed in the review application. It is specifically pointed out that ***Prem Singh (supra)*** was considered by the Hon'ble Supreme Court and distinguished.

5. We are quite aware of the restricted jurisdiction in a review and even if Order 47, Rule 1 is not strictly applicable in writ proceedings; often constitutional Courts have looked at the C.P.C. as a guideline. We have to specifically notice that explanation under Order 47, Rule 1 speaks of a subsequent judgment of a superior court not being a ground for



review. In the present case, the judgment under review is dated 29.11.2019 and the Full Bench decision is of 02.09.2019; a couple of months prior to the judgment under review.

6. The Full Bench was considering a reference by a Single Judge, which noticed conflict in two judgments of separate Division Benches; *State of Bihar vs. Sheela Devi dated 21.09.2015 in L.P.A No. 416 of 2013 & Binod Kumar vs. State of Bihar dated 04.01.2018 in L.P.A No. 12674 of 2017*. The Full Bench having considered the issue found that there was no apparent conflict in the two decisions. *Sheela Devi* directed the work-charged establishment to be reckoned for pension, while *Binod Kumar* permitted the deficient period to be supplied from the work-charged establishment for enabling pension; both similar in terms. Noticing the history of work-charged establishment, it was found that always that service was reckoned only to the extent of enabling an employee to qualify for pension, or his dependents, to family pension; meaning the minimum pension. The reference was only on account of an observation made by another Division Bench, in a review filed from *Sheela Devi*. In review though it was observed that the addition of the deficient period alone, to qualify for pension was incorrect; but the review was declined on the well-heeled



principle of such a different opinion being permissible only in an appeal and not a review. In fact, both the Division Benches which led to the reference, found that the beneficial decisions taken by the Government enabling pension to the work-charged employees, who were later regularized, cannot be faulted. However, it was categorically held that both the Division Benches spoke only of addition of such period rendered under work-charged establishment, to be supplied for the bare attainment of the minimum qualifying period for pension and not otherwise.

7. The Full Bench looked at the various decisions taken by the Government with regard to the subject matter; all of which were in the nature of beneficial decisions but not at any time treating the entire service period under work-charged establishment for the purpose of calculating the pensionable service of the work-charged employees, who were later regularized. Counting the work-charged tenure was only for the purpose of making the service pensionable, which otherwise would not have been possible, was the categoric finding in Paragraph 13.

8. The Hon'ble Supreme Court has also by the decision in Civil Appeal No. 3155 of 2023 dated 28.04.2023



upheld the decision of the Full Bench of this Court. **Prem Singh** (*supra*) was specifically referred and it was held so in Paragraph 6.3, which is extracted herein below:-

*“6.3 Now, insofar as the reliance placed upon the decision of this Court in the case of **Prem Singh** (*supra*) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered / counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered / counted for the quantum of pension / pension. The decision of this Court in the case of **Prem Singh** (*supra*), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension.”*

9. **Prem Singh** (*supra*) considered the question as to whether work-charged employees could be treated differently, if such service is preceded by temporary or regular appointment



in the pensionable establishment. It was held that the rule, which provided reckoning of work-charged service for the purpose of pension to those employees whose work-charged service was sandwiched between two temporary appointments or between a temporary or permanent service; but denied such benefit to those who continued for long solely in the work-charged establishment, was highly discriminatory and irrational. The aforesaid decision of the Hon'ble Supreme Court which confirmed the Full Bench decision of this Court also drew the specific distinction insofar as the rules considered in ***Prem Singh*** having completely denied the reckoning of work-charged service for the purposes of pension.

10. As has been noticed by the Full Bench while regularizing the work-charged employees, a benefit was conferred on them to ensure at least minimum pension; by addition of one year for every five years served on the work-charged establishment and a further addition of the then deficient years too, to attain the minimum qualifying period. It is also to be observed that the beneficial provision conferring such minimum pensionable service, by reckoning the work-charged service, was the specific condition of the order of regularization. Having accepted the regularization on the said



condition, the employees cannot turn around and challenge the conditions subject to which they were regularized.

11. We are of the opinion that the judgment has to be reviewed and we recall the judgment and on the above reasoning, we dismiss the L.P.A. following the earlier Full Bench decision, which was upheld by the Hon’ble Supreme Court. We make it clear that this would not dis-entitle the writ petitioners from getting pension and attaining pensionable service as per the beneficial provision available in their order of regularization.

12. The revision stands allowed. The L.P.A. stands dismissed with the above reservation.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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