

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.493 of 2019

In
Civil Writ Jurisdiction Case No.8291 of 2014

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Ashok Kumar Sharma Son of Indradeo Sharma Resident of Village- Amarpur,
Post Office- Babhangama, Police Station- Bihpur, District-Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The District Magistrate, Bhagalpur.
3. The Deputy Collector (Establishment), Bhagalpur.
4. The Block Development Officer, Kharik, District- Bhagalpur.
5. The Accountant General, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Pravina Kumari, Adv.
For the State : Mr. Shailendra Kumar Dwivedi

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-03-2023

Re. I.A. No. 01 of 2019

This interlocutory application has been filed
for condoning the delay of 69 days in preferring this
appeal.

For the reasons stated in the Interlocutory
Application No. 01 of 2019, the delay of 69 days in
preferring this appeal is condoned.

The application stands allowed.

L.P.A. No. 493 of 2019



The defects as pointed out by the stamp reporter are hereby ignored.

Heard Mrs. Praveena Kumari, learned advocate for the appellant and Mr. Shailendra Kumar Dwivedi, learned counsel for the State.

The appellant has challenged the order dated 07.01.2019 passed by the learned single Judge of this Court in C.W.J.C. No. 8291 of 2014 whereby his prayer for a direction to the authorities to grant him pension after condoning the deficiency of 11 months short in service for qualifying for pension and another benefits.

The appellant had worked during census operation between 30.03.1981 to 31.05.1982. The engagement of the appellant ceased when the census operation was finished. However, since many others, similarly situated, had been rendered jobless, a direction was issued to the Government to consider their cases for regular appointment in various establishments, provided there was vacancy.

Considering this aspect of the matter, many such persons who had worked in the census operation got regular appointment including the appellant. However, the appellant's appointment was slightly



later than the others and therefore he superannuated on 31.01.2012 after having worked for 9 years and 23 days.

The contention of the appellant is that other census workers were given appointment before the appellant and therefore they had completed ten years in service which qualified them for grant of pension. Only because the appellant had not approached the Courts for his absorption in regular service, he could not complete ten years in service because of age, but such deficiency in the tenure of service could be condoned by the appropriate government in accordance with Rule 106 of the Bihar Pension Rules.

Most of the census workers, Mrs. Pravina Kumari argues, have been granted pension for their having served for ten years. Only because of the appellant's delayed absorption, he has been kept away from pensionary benefits.

The learned single Judge after having recorded all the above noted facts, has found that the qualifying period of service of the appellant was not such as to grant him pension and rejected his claim.

Rule 106 of the Bihar Pension Rules specifies that upon any conditions which it may think



fit to impose, the authority competent to sanction the pension of a Government servant may condone a deficiency of three months in his qualifying service. Condonation of deficiencies beyond three months will require the orders of the Provincial Government.

One of the basic principles which is to be observed while considering cases of condonation of deficiencies in service under Rule 106 of the Bihar Pension Rules is that condonation of short periods only will ordinarily be allowed where a Government servant is compelled to retire on invalid pension or when condonation of a short deficiency is necessary to enable a Government servant to draw pension instead of gratuity. The other condition is that the condonation of short periods also should ordinarily be allowed where there has been a fairly long period of continuous temporary or other service.

The appellant does not come in any one of the categories.

It is quite fortuitous that the appellant could not complete ten years in service but nothing can be done for curing the deficiency of the period falling short of his services to become pensionable.

We do not find any folly in the order dated



07.01.2019 passed by the learned single Judge.

The appeal, thus is dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

rohit/sunil

AFR/NAFR	NAFR
CAV DATE	NA
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