

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8296 of 2012

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RAM BIHARI RAI, S/O Late Raghubir Rai R/O Village- Chatar, P.O.-
Babhangawa, P.S.- Barhara, District-Bhojpur Ara

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Director, The Panchayat Raj, Bihar, Patna
3. The District Magistrate, Bhojpur At Ara
4. The District Panchayati Raj Officer, Bhojpur At Ara
5. The Block Development Officer, Tarari, Bhojpur
6. The Accountant General A and E, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Pandey, Advocate

For the Respondent/s : Mr. Bijay Kumar Singh, A.C. to AAG-V

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 21-03-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

Learned counsel appearing on behalf of the petitioner informs this Court that the petitioner was appointed on 23.01.1979 as Dalpati in Chatar Ram Sahay Panchayat and thereafter he was posted in the District of Bhojpur. The appointment of the petitioner was approved by the District Panchayat Officer. Thereafter, by order dated 05.01.1987, the service of several Dalpati including the petitioner was terminated by District Panchayat Officer, Bhojpur on account that subsequently they were found to be physically unfit.



Learned counsel submits that at the time of appointment of the petitioner, he was subjected to medical test and he was found fit and there was no requirement of another medical test declarign him unfit is tested with malafide exercise of power and passing illegal order of termination is fit to be set aside. Learned counsel in support of his contention has placed reliance on an order passed in **C.W.J.C. No.5201 of 1990 (Ram Bihari Rai and Anr. Vs. State of Bihar)** which was disposed of vide order dated 07.09.2009. This Court in the said writ petition has held that order of termination of the writ petitioner who was Dalpati, order dated 05.01.1987 was quashed and the writ petition was allowed relying upon two orders of this Court passed in **C.W.J.C. N.3370 of 1989** and in **C.W.J.C. No.6553 of 1989** by two Coordinate Benches of this Court, the termination order which is the subject matter of the present writ petition. Learned counsel further submits that in case of the present petitioner, a communication was made that in counter affidavit filed on behalf of respondent No.6-Accountant General in paragraph No.5, statement has been made which is reproduced hereinafter :-

“5. That it is submitted that after receipt of the instant writ petition, a letter has been written by the office of the answering respondent to the Block Development Officer, Tarari, Bhojpur vide Pen-16-G-273-74, dated



02.05.2012 and requested him to send the service book of the petitioner after discussion with regard to date of appointment of the petitioner. A copy of the same was also sent to the petitioner.”

Learned counsel further submits that the petitioner would not have suffer on account of states in action as he has rendered his entire life in service of the State and the State being the welfare State, the pensionary benefit must be considered sympathetically and the same be granted to him without considering the fact that a short period was not rendered by the petitioner for completing the 10 years of service which was not at the fault of the petitioner.

Learned counsel appearing on behalf of the State submitted that the petitioner is not eligible though due to shortage of very small period of service, his service has been found to be not qualifying service for the purpose of pension and in this regard, he has referred to the reasons assigned in paragraph No.7 to the counter affidavit which is reproduced hereinafter :-

“7. That it is humbly stated and submitted that again the petitioner filed a writ petition bearing C.W.J.C. No. 9246 of 1995 and his matter was referred to the Director, Panchayat Raj Department to take a necessary action on the representation of Sri Rai in compliance of the order of Hon’ble High Court, a direction was given by the Director, Panchayat Raj to the appointing authority to appoint Sri Rai. After that, Sri Rai was



appointed as Panchayat Sewak vide Memo No.311 dated 12.07.1999 and posted to Tarari Block of Bhojpur District and accordingly Sri Rai joined on the Panchayat Sewak on 15.07.1999.”

Considering the rival submissions made on behalf of the respective parties, this Court finds that the State Government and concerned respondents may consider the case of the petitioner who has served the Government from the period 15.07.1999 to 28.02.2009. Taking into consideration that the order of termination has been quashed by this Court and therefore, the State being welfare State should consider the period for calculation of qualifying service for grant of pension, the petitioner is directed to file a detailed representation before the District Magistrate, Bhojpur at Ara who will consider the entire fact and pass appropriate order considering the order of the coordinate Bench as mentioned above and give the benefit of pension to the petitioner in accordance with law.

With the aforesaid observation, this writ petition is disposed of.

(Purnendu Singh, J)

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