

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14010 of 2023

Harish Chandra Choudhary Son of Late Yadunandan Choudhary, Resident of
Village- Dodpur, Police Station- Bhagwanpur, District- Begusrai.
... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary Rural Engineering Organization (R.E.O) Department Government of Bihar Patna.
2. The Engineer-in- Chief Rural Engineering Organization (R.E.O) Department Government of Bihar Patna.
3. The Chief Engineer, 3 R.E.O Department, government of Bihar Patna.
4. The Superintending Engineer, cum R.E.O. Department Darbhanga Circle Darbhanga.
5. The Executive Engineer Nodal Officer MMGSY R.E.O. Department Rosera Division Samastipur.
6. The Assistant Engineer, R.E.O. Department Sub-Division, Rosera Samastipur.
7. The Assistant Engineer, R.E.O. Department Sub-Division Dalsinghsarai, Samstipur.
8. The Accountant General of Bihar Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Choudhary, Advocate
For the Respondent/s	:	Mrs. Archana Meenakshee, GP-6
	:	Mr. Prabhat Ranjan, AC to GP-6
For the A.G., Bihar	:	Mr. Raj Nandan Prasad, Advocate
	:	Mr. Vishesh Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 04-10-2023

Heard Mr. Anil Kumar Choudhary, learned counsel

appearing on behalf of the petitioner, Mr. Raj Nandan Prasad,

learned counsel appearing on behalf of the Accountant General,

Bihar and Mrs. Archana Meenakshee, learned GP-6 appearing

on behalf of the State.

2. Learned counsel appearing on behalf of the

petitioner submits that petitioner has earlier approached this

Hon'ble Court by filing CWJC No.8640 of 1998 in which a

detailed judgement was passed vide order dated 25.01.20212.

The operating part of the judgement in which submissions have

been made in paragraph nos.8 to 12. Counsel submits that

petitioner is aggrieved that in-spite of the specific observation and direction made in the said judgment, the Chief Engineer, Samastipur of Rural Works Department, Government of Bihar convened a meeting dated 27.03.2019 considering the claim of the petitioner in judgement passed by this Hon'ble Court in CWJC No.8640 of 1998. However, no action has been taken in-spite of the communication made by the Chief Engineer, Samastipur that the concerned authorities should take steps to make payment and to consider the case of the petitioner in accordance with law. Learned counsel further submits that recently Division Bench of this Hon'ble Court passed an order dated 26.06.2023 in **L.P.A. No.198 of 2016** in the case of **The Registrar General, Patna High Court Vs. Ram Vyas Dubey & Ors.** in which it has been held that in accordance with Rule nos.58 and 59 of the Bihar Pension Rules, the petitioner is entitled for pension, in which the following observations have been made, which are produced hereinafter : -

“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 maybe 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. Pen1024/69/11779 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.

13. Taking into consideration the material on record, Rules 58 and 59 of the Bihar Pension Rules, 1950 and the Memo dated 12.8.1969 which has also been extracted in full by the learned Single Judge in the order impugned, the learned Single

Judge was rightly pleased to allow the prayer sought for in the writ application.”

He also submits that petitioner’s claim is also covered by the Apex Court judgement in the case of **Prem Singh Vs. State of Uttar Pradesh & Ors.** reported in **(2019)10 SCC 516.**

3. Considering the submissions made on behalf of the petitioner and relief sought by the petitioner in the present writ petition and pleading in support of the relief, as well as, specific directions made by the Co-ordinate Bench of this Court in CWJC No.8640 of 1998, respondent no.3 i.e. the Chief Engineer, Rural Works Department, Government of Bihar is directed to call for the service record of the petitioner and ensure the payment sought by the petitioner, in accordance with law, in the light of law laid down by the Apex Court and the Division Bench of this Hon’ble High Court within a period of 4 weeks from the date of communication of this order.

4. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.10.2023
Transmission Date	NA