

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.124 of 2021

In
Civil Writ Jurisdiction Case No.4643 of 2017

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1. The Bihar School Examination Board through its Chairman, Sinha Library Road, Patna-17.
 2. The Secretary, Bihar School Examination Board, Sinha Library Road, Patna-17.
 3. The Deputy Secretary, Bihar School Examination Board, Sinha Library Road, Patna-17

... .. Appellants.

Versus

Arti Kumari @ Nibha Wife of Sri Chitranjan Pandey and Daughter of Late Sugandha Upadhyay, Resident of Mohalla-Hanuman Nagar, P.S. Patrakar Nagar, District-Patna.

... .. Respondent.

Appearance :

For the Appellants	:	Mr. Satyabir Bharti, Advocate. Mr. Abhishek Anand, Advocate. Ms. Kanupriya, Advocate.
For the Respondent	:	Mr. Awadhesh Kumar Mishra, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-06-2024

The present L.P.A. is presented on behalf of the Bihar School Examination Board in assailing the order dated 28.05.2020 passed in C.W.J.C. No.4643 of 2017.

2. Grievance of the respondent Arti Kumari alias Nibha, wife of Chitranjan Pandey and daughter of Late Sugandha Upadhyay. Deceased Sugandha Upadhyay was appointed on daily wage basis in the Bihar School Examination Board in the month of March, 1975. Among others, his services



were regularized on 21.01.1981 with effect from 01.01.1981 and he had attained the age of superannuation and retired from service. He had claimed that service rendered as a daily wager from March, 1975 till 01.01.1981 was required to be counted for the purpose of fixation of pension. The same was subject matter of two litigations. On earlier occasions, this Court directed the Bihar School Examination Board to consider grievance of the legal representative of the deceased Sugandha Upadhyay. Ultimately, a detailed order was passed and communicated to the respondent on 21.09.2016 during the pendency of C.W.J.C. No.4643 of 2017. By means of supplementary, respondent has assailed the order dated 21.09.2016 which was produced as Annexure-5/A.

3. The learned Single Judge without examining the contents of the order dated 21.09.2016 by which the grievance of the respondent has been turned down with reference to statutory provisions like Rule 58 of the Bihar Pension Rules to the extent that deceased Sugandha Upadhyay has failed to fulfill the criteria mentioned in Rule 58 of the Bihar Pension Rules, proceeded to quash order dated 21.09.2016. Whereas, the learned Single Judge while quoting paragraph-7 of the order dated 29.03.2016 passed in L.P.A. No.1463 of 2013 relied on



even though L.P.A. No.1463 of 2013 filed by the respondent was withdrawn. The Coordinate Bench made an observation in paragraph-7. Such observation is in the absence of considering Rule 58 of the Bihar Pension Rules. Therefore, the learned Single Judge has committed error in not taking note of statutory provisions like Rule 58 of Bihar Pension Rules. Thus, learned counsel for the appellants submitted that order of the learned Single Judge is liable to be set aside while affirming the decision dated 21.09.2016 to the extent that deceased employee is not entitled to count daily wage service from March, 1975 to 01.01.1981. In support of the aforementioned contention, he is relying on two Full Bench decisions of this Court which are reported in **(2014) 4 PLJR 229 {The State of Bihar and another Vs. Bhagwan Singh (since dead)}** (paragraphs-11 to 14) and **(2019) 2 BLJ 9 (Mobina Khatoon Versus State of Bihar through the Principal Secretary, Public Health Engineering Department and Others)** (paragraphs-45 to 48). From these two judicial pronouncements, learned counsel for the appellants submitted that this Court had an occasion to examine as to whether daily wage service could be counted for the purpose of pension or not and another issue is relating to service rendered against the work charge establishment service



could be counted or not. In the later decision, i.e., **(2019) 2 BLJ 9**, Full Bench has extended the benefit of counting work charge establish service towards pension and distinguished that a daily wage service cannot be counted for the purpose of pension. These are all the settled principles insofar as entitlement of counting service on daily wage basis towards fixation of pension.

4. Per contra, learned counsel for the respondent resisted the aforementioned contention of the learned counsel for the appellants and supported the order of the learned Single Judge dated 28.05.2020 passed in C.W.J.C. No.4643 of 2017 to the extent that there is no error committed by the learned Single Judge. In support of the contention that deceased Sugandha Upadhyay who has rendered service as a daily wager from March, 1975 to 01.01.1981 and it is required to be counted for the purpose of pension, he relied on Full Bench decision of this Court cited on behalf of the appellants, namely, **(2019) 2 BLJ 9 (Mobina Khatoon Versus State of Bihar through the Principal Secretary, Public Health Engineering Department and Others)**. He could not apprise this Court whether is there any judicial pronouncement to the extent that daily wage service could be counted for the purpose of pension or not. Further, he



relied on Hon'ble Supreme Court decision in the case of **Yashwant Hari Katakhar vs. Union of India and others decided on 19th September 1994** reported in {(1996) 7 Supreme Court Cases 113}.

5. Heard the learned counsel for the respective parties.

6. Undisputed facts are that deceased Sugandha Upadhyay had rendered service as a daily wager during the intervening period from March, 1975 to 01.01.1981, the date on which his services were regularized.

7. Core issue involved in the present lis is whether daily wage service could be counted for the purpose of fixation of pension or not?

8. Perusal of the cited Full Bench decision of this Court (supra), it is evident that daily wage service cannot be counted for the purpose of fixation of pension. On the other hand, Full Bench decision supports the case of work charge established employee to the extent that his/her service could be counted for the purpose of pension if it is rendered in the work charge establish.

9. Perusal of the impugned order dated 21.09.2016 in C.W.J.C. No.4643 of 2017, it is evident that the grievance of the deceased employee has been rejected on the score that he does



not fulfill the criteria laid down under Rule 58 of Bihar Pension Rules. One of the conditions stipulated under Rule 58 of Bihar Pension Rules is that the employee/Government servant should have a status of substantive and permanent appointment. The deceased Sugandha Upadhyay had a status of permanent and substantive capacity of the particular post only with effect from 01.01.1981. Therefore, Rule 58 of Bihar Pension Rules bars the counting any service other than a person holder of substantive and permanent post.

10. These are all statutory provision which has not been taken note of by the learned Single Judge. To that effect, order of the learned Single Judge is incorrect.

11. The Hon'ble Supreme Court in the case of **Nair Service Society vs. Dr. T. Beermasthan and others** reported in (2009) 5 SCC 545 in paragraph no.48 has held as under.

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and



different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

12. Having regard to the aforementioned decision, we have to take note of provisions of the Bihar Pension Rules, in particular, Rule 58 so as to verify whether deceased Sugandha Upadhyay fulfills the criterias mentioned in Rule 58 of the Bihar Pension Rules or not. Undisputedly deceased employee permanent status was only w.e.f. 01.01.1981.

13. In view of these facts and circumstances the appellants have made out a case so as to interfere with the order of learned Single Judge dated 28.05.2020 passed in C.W.J.C. No.4643 of 2017. Accordingly, it is set aside. We affirm the decision of the appellants dated 21.09.2016 (Annexure-5/A to C.W.J.C.).

14. Accordingly, L.P.A. stands allowed.

15. Pending Interlocutory Applications, if any, stand



disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

P.S./-Durgesh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.06.2024.
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