

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14881 of 2012

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1. Bipin Kumar Singh and Ors. S/O Late Maheshwari Pd. Singh Resident Of Village And Post Kulharia, P.S. Koelwar, District Bhojpur
 2. Ved Prakash S/O Late Jugal Kishore Sahu Resident Of Village And Post Mahna, District Begusarai
 3. Birendra Kumar Roy S/O Late Basudeo Rai Resident Of Village Ehaknur, Post Gadaisarai, District Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Government Of Bihar, Patna
3. The Principal Secretary, General Administration, Government Of Bihar, Patna
4. The Principal Secretary, Registration, Excise And Prohibition Department, Government Of Bihar, Pa
5. The Managing Director, Bihar State Beverages Corporation Ltd. Vidyut Bhawan, 1st Floor, Jawahar Lal

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate
For the B.S.B.C.L.	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Vikas Kumar, Advocate
		Mr. Kanishka Shankar, Advocate
For the State	:	Mr. Raghwanand, GA-11
		Mr. Sanjay Kumar Tiwari, AC to GA-11

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-05-2024

Heard Mr. Bipin Bihari Singh, learned counsel appearing on behalf of the petitioners; Mr. Lalit Kishore, learned senior counsel along with Mr. Vikas Kumar, learned counsel for the Bihar State Beverages Corporation Ltd. and Mr.



Raghwanand, learned GA-11 along with Mr. Sanjay Kumar Tiwari, learned AC to GA-11 for the State.

2. Learned counsel appearing on behalf of the petitioners at the outset submits that petitioners no. 1 and 3 have already retired and he is not placing their case.

3. Accordingly, the present writ petition against petitioners no. 1 and 3 is dismissed.

4. The petitioner no. 2 has prayed for following relief(s) in paragraph no. 1 of the present writ petition:

"That the present writ petition is being filed for issuance of an appropriate writ/ writs, order / orders, direction/ directions for considering of permanent absorption against the post on which they are working in the corporation in question or an appropriate place under the State taking into consideration the law settled in CWJC No. 10016 of 2007 Bihar State Government Employees Association and others versus the State of Bihar and others under which the respondents were directed to pass the necessary order of absorption of the petitioners and restrain them from the repatriating to the defunct Board / corporations and the public sector undertaking and the further direction was towards the payment of salary, pensionary benefit and remaining on the same post and consequently the said order was upheld in LPA No. 183 of 2011 on 16.06.2012 by the Division Bench of Hon'ble Patna High Court and for the other necessary relief/ reliefs on the basis of the facts and circumstances of this case as stated and enumerated hereinafter."

5. The grievance of the petitioner no. 2 in the present writ petition is that he was working in Bihar Insecticides Limited, a Government of Bihar undertaking and, thereafter, he was inducted in Bihar State Beverages Corporation Limited on



deputation, where he had jointed on 15.07.2007 on the post of accountant. The Bihar State Beverages Corporation became almost defunct and the services of the petitioner was taken into regular establishment of Industries Department, Government of Bihar vide Memo No. 4726 dated 05.12.2019 on the post of Upper Division Clerk (Level-4) giving the status of the petitioner with respect to his date of birth being 04.07.1960, educational qualification Graduation. Petitioner was posted at District Industry Centre, Sheikhpura and had retired on 31.07.2020. The question for consideration of this Court is whether it can be considered that services of the petitioner qualify for pension and other pensionary benefits in accordance with Rule 58 of Bihar Pension Rules, 1950. Recently, the Apex Court in case of *the Secretary, State of Karnataka & Ors. Vrs. Umadevi & Ors.* reported in (2006) 4 SCC 1 has held that service condition has evolved over time warrant a reclassification from temporary to regular status. The case of the petitioner is that as he has rendered his services in past in different government undertakings, he has qualified after he has been taken into regular establishment of the State Government and in light of Rule 58 of the Bihar Pension Rules, 1950, his services will be treated to be pensionable services. In this



regard, I take note of Rule 58 and Rule 59 of the Bihar Pension Rules, 1950, which deals with the condition of the services of the Government servant to qualify for pension, which is reproduced hereinafter:

“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.

59. The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled-

(1) declare that any specified kind of service rendered in a non- gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.”

6. Reading the above provision clearly provides that even a person has worked in temporary capacity and has not been confirmed, and worked for more than 15 years then it may be considered as pensionable under Rule 59 of the Bihar Pension Rules, 1950. The said question arose before a Division Bench of this Court in ***Registrar General, Patna High Court Versus Ram Vyas Dubey and Ors. (LPA No.198 of 2016 arising out of CWJC No.15761 of 2013)*** and vide judgment dated 26.06.2023, considering the fact that the petitioners of the



said writ petition were daily wager/literate mazdoor in the office of the appellant i.e. Registrar General, Patna High Court, which has adopted the Bihar Pension Rules and had rendered their services for more than 10 years and were debarred from pension on account of their regular services being less than 10 years. The bar of minimum 10 years of service a regular employee is required to qualify for pension and same has been fixed for the Government of Bihar in accordance with Rule 58 of the Bihar Pension Rules.

7. In the present case, admittedly, the petitioners were not employee of the State Government and had worked on daily wages and with respect to the relief granted to the writ petition of CWJC No. 15761 of 2013 can clearly be distinguishable from the facts of the present case taking into consideration that the petitioner was employee of Bihar Insectides Corporation and, thereafter, he was deputed to Bihar State Beverages Corporation and considering his qualification, the State Government has taken him into regular establishment of District Industrial Centre, Shekhpura, with effect from 05.12.2019 vide Memo No. 4726 in light of CWJC No. 10016 of 2007, which was consequently upheld in LPA No. 183 of 2011. The case of the petitioner is also supported by the law laid down by the Apex



Court in Case of The State of Bihar & Ors. vs. Mahendra Kumar Mishra & Ors. (Special Leave to Appeal (C) D. No(s). 15567 of 2018 arising out of L.P.A No. 763 of 2017). In light of the said decision of the Apex Court and later development wherein the Apex Court has held that services rendered in the Corporation or Government Undertaking is required to be counted after the absorption for the purposes of granting retiral benefit and other pensionary benefits.

8. A representation has already been filed by the petitioner, which is pending before the Director, Industries, Bihar since 15.07.2020 and no final decision has been taken by the Director, Industries.

9. The Director, Industries, Bihar is directed to consider the case of the petitioner in light of the judgment passed by this Court in LPA No. 763 of 2017 and the law laid down by the Apex Court in Special Leave to Appeal (C) D. No(s). 15567 of 2018 and dispose of the representation within a period of six weeks from the date of communication of this order.

10. In case it is found that the case of the petitioner is covered by the decision of this Court and the Hon'ble Supreme Court, the petitioner is entitled for all pensionary benefit along



with other retiral benefits in light of the law laid down by the Apex Court well within a period of three months.

11. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R
CAV DATE	N/A
Uploading Date	16.05.2024
Transmission Date	N/A

