

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14390 of 2016

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Lal Babu Singh S/o Late Rambricsh Singh Resident of village - Koil Bhupat,
P.S Mehandia, District- Arwal.

... .. Petitioner/s

Versus

1. The Patna Univeristy and Ors
2. The Vice-Chancellor, Patna University, Patna.
3. The Registrar, patna university, patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shally Kumari
For the Respondent/s	:	Mr. Kameshwar Kumar (Gp17)
	:	Mr. Sanjay Kumar (Ac to Gp17)
For the P.U.	:	Mr. Digvijay Singh
	:	Mr. B.J. Jha

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 7 25-07-2024 1. Mr. Siya Ram Shahi, learned counsel appearing for the petitioner submits that the petitioner was appointed as a Clerk on 05.02.1977 in B.N. College under the Patna University on a fixed salary of Rs. 200/- on casual basis. Subsequently, the salary of the petitioner was revised from time to time and finally the petitioner received the fixed salary of Rs. 3,250/-. The services of the petitioner was absorbed by the Patna University, *vide* its Memo No. 214, dated 29.01.2004, on the post of Routine Clerk in the pay scale of Rs. 975 – Rs. 1540/- and was posted in B.N. College, Patna, itself. The petitioner retired on 28.02.2013 as Upper Division Clerk from the services of the Patna University. There is a shortfall of about 11 months in



completion of qualifying service for payment of pension which can be considered by the respondents in view of the judgment passed in L.P.A. No. 511 of 2018 arising out of C.W.J.C. No. 4712 of 2016 (Satendra Prasad v. The Patna University and Others).

2. This Hon'ble Court in number of cases has been pleased to hold that Rule 106 of Bihar Pension Rules gives power to the State Government to condone the deficit period of pensionable services. The petitioner has worked from 05.02.1977 to 28.02.2013 including the temporary service for about thirty six years. The services rendered by the petitioner as casual employee can be added in order to fill up the deficit period of pensionable services which comes to about 11 months.

3. Learned counsel for the University submits that the period rendered by the petitioner as daily wages/casual employee cannot be added for payment of pension.

4. I have heard learned counsel for the parties. Upon perusal of the judgment passed in L.P.A. No. 511 of 2018 filed by the similarly situated employees who were appointed along with the petitioner, it appears that the Division Bench of this Court has noticed statutory



provision meant for the Patna University and held that it does not prescribe the qualifying years of service making the employee entitled for the pension and took note of Clause 24 of the Retirement Benefit Statute which has been quoted in the judgment as follows :-

"24. Subject to the provisions of the Retirement Benefit Statutes-

(a) the preceding rules will stand amended in event of any change(s) to the corresponding provision(s) in the Bihar Pension Rules,

(b) the Bihar Pension Rules, will apply, as amended from time to time, in all matters not covered by the preceding Rules so far as procedure regarding grant/payment of pension(s)/gratuity is concerned."

5. On perusal of Clause 24 of the Statute, the Division Bench arrived at the conclusion that Bihar Pension Rule applies in uncovered area of Statute and in such circumstances, Bihar Pension Rule would apply dealing with requisites for entitlement of pension. The Division Bench has also taken note of Rule 59 and Rule 106 of the Bihar Pension Rule and held that this provision enables the State Government or the employer to condone the deficiency/shortage of period and accordingly directed the appellant (Satendra Prasad) to file an application through



Registrar to the Vice-Chancellor with further direction to the Registrar to forward the same to the State Government i.e., the Additional Chief Secretary, Education Department, in view of Rule 106 of Bihar Pension Rule with further observation that the State Government would condone the deficiency considering the long period of service of the petitioner and also considering the shortage of period of four months and one day. In the present case, the shortage is eleven months. The Additional Chief Secretary, Education Department, was directed to take a decision within a period of two months.

6. In yet another judgment of this Court in L.P.A. No. 198 of 2016, a Division Bench of this Court, taking note of Rule 58 and 59 of the Bihar Pension Rule, 1950, read with the circular of the Government, having Memo No. Pen1024/69/11779 F., dated 12.08.1969, has held that if a person is working in temporary capacity and has not been confirmed, if his services on any post is continuous and is for more than fifteen years then it may be considered as pensionable under Rule 59 of the Bihar Pension Rules, 1950.

7. The judgment rendered by a Division Bench of this



Court, in L.P.A. No. 511 of 2018 arises out of C.W.J.C. No. 4712 of 2016, filed by similarly situated employee Satendra Prasad who was absorbed on casual basis along with the petitioner on 29.01.2004, *vide Annexure 1*.

8. Considering the judgments passed by the Division Bench of this Court as discussed above and the fact that the petitioner has worked for a long period of time as casual worker, the State Government could ordinarily allow condonation of short period of eleven months for payment of pension to the petitioner. Accordingly, let the petitioner file an application before the Vice-Chancellor through Registrar in this regard. The Registrar is directed to forward the application forthwith before the Additional Chief Secretary, Education Department, Government of Bihar.

9. The Additional Chief Secretary, in view of the judgment of this Court passed in L.P.A. No. 511 of 2018 arising out of C.W.J.C. No. 4712 of 2016, L.P.A. No. 198 of 2016 and Rule 58, 59 and 106 of the Bihar Pension Rules, 1950, read with circular of the State Government of 1969, would take a decision for condoning the shortfall of eleven months for entitlement of pension to the



petitioner. The decision, in this regard, must be taken by the Additional Chief Secretary, Education Department, Government of Bihar, within a period of three months from the date of receipt/production of a copy of this order.

10. Accordingly, the present writ application is disposed with the aforesaid direction.

(Anil Kumar Sinha, J)

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