IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1824 of 2015

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Bedami Devi Wife of Late Gulab Chand Ram Resident of Village - Mahubal Bazar, P.S Hussaingang, District - Siwan.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Water Resources Department, Government of Bihar, Patna
2. The Engineer in chief, Water Resources Department, Government of Bihar, Patna.
3. The Superintending Engineer, Gandak Yojna, Siwan.
4. The Executive Engineer, Gandak Youjna, Siwan.
5. The Accountant General Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar, Advocate
For the State	:	Mr. Nalin vilochan Tiwary, AC to GA 9
For the A.G. Bihar	:	Mr. Binod Kumar Labh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 08-08-2024

Heard Mr. Deepak Kumar, learned counsel appearing on behalf of the petitioner; Mr. Nalin vilochan Tiwary, learned AC to GA 9 for the State and Mr. Binod Kumar Labh, learned counsel for the Accountant General, Bihar.

2. Learned counsel appearing on behalf of the petitioner submitted that petitioner's deceased husband was initially engaged as daily wager and thereafter he was taken into work charged establishment with effect from 01.02.1974. The husband of the petitioner died in harness on 11.12.1982 as a 4th class employee. It is submitted on behalf of the petitioner that

for the purposes of calculation of pensionary benefit/family pension payable to the petitioner, the initial period of engagement as a daily wager is required to be counted in light of Rules 58 and 59 of the Bihar Pension Rules, which deals with the condition of service of a Government servant to qualify for pension, may be referred too and the same 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."*

3. Learned counsel further submitted that the respondents have denied retiral benefits on the premise that he had not completed 10 years qualifying service, as required in terms of the Service Rules. Learned counsel submitted that the decision of the respondents is against the mandate of Rules 58 and 59 of the Bihar Pension Rules, 1950.

4. *Per contra*, Mr. Nalin Vilochan Tiwary, learned State counsel submitted that petitioner is not entitled for family pension, as the petitioner has admitted that her husband / Gulab Chand Ram was inducted into work charged establishment on 01.02.1974 and he died in harness on 11.12.1982 and worked for about 8 years therefore, he has not qualified for the pensionable service, as he was not taken into regular establishment of the State Government.

5. Learned counsel further clarified that the Division Bench of this Court has taken note of the relevant Rules in **L.P.A. No. 198 of 2016 (Registrar General, Patna High Court Vs. Ram Vyas Dubey and Ors)** and relevant paragraphs of the said judgment is reproduced 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 may be 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. Pen 1024/69/11779 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.

14. The Court finds no illegality in the order of the learned Single Judge nor any merit in the instant appeal.

15. The appeal is dismissed."

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties and also taking into consideration the observation made in case of **Registrar General, Patna High Court (Supra)**, as well as, the admitted case of the petitioner is that her husband had worked as a daily wager and thereafter from 01.02.1974 he was taken into work charged establishment for 8 years before he had died on 11.12.1982 in harness, I find

that the petitioner's husband was not taken into regular establishment of the State Government. In counter affidavit, there is no statement regarding the period, the husband of the petitioner had worked as daily wager. I direct the concerned authorities to call for the service records of the deceased employee in respect of his engagement as daily wager and thereafter proceed to calculate the total period of his service rendered as daily wager in work charged establishment and take decision in light of provision of Rules 58 and 59 of the Bihar Pension Rules, 1950.

8. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2024
Transmission Date	NA