IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12709 of 2023

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Bishwanath Prasad Suman Son of Late Hazari Lal Roy, Resident of At and P.O. - Bajidpur Karnail, Police Station- Tajpur, District- Samastipur, Bihar (848505).

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Energy Department, Government of Bihar, Patna.
3. The Bihar Renewable Energy Development Agency through its Chairman, Sone Bhawan, Veer Chand Patel Marg, Patna.
4. The Chairman, Bihar Renewable Energy Development Agency, Sone Bhawan, Veer Chand Patel Marg, Patna.
5. The Director, Bihar Renewable Energy Development Agency, Sone Bhawan, Veer Chand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik with Ms. Namrata Dubey, Advocates
For the State	:	Mr. Abbas Haider, SC 6 with Mr. Wasi Mohammad, AC to SC 6
For the BREDA	:	Mr. Prasoon Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 10-12-2024

This Court has heard Mr. Kumar Kaushik, learned Advocate for the petitioner and Mr. Abbas Haider, learned Advocate for the State as well as Mr. Prasson Sinha, learned Advocate for the BREDA.

2. The petitioner is aggrieved by the office order contained in Memo No. 382 dated 08.03.2018 issued under the signature of the respondent no. 5, whereby the claim of petitioner for payment of pension has been turned down. The

petitioner also sought a direction upon the respondent State of Bihar in its Energy Department to fix and pay the pension of the petitioner, who superannuated on 30.09.2013 from the post of Junior Engineer, while being deputed at Bihar Renewable Energy Development Agency (hereinafter referred to as the 'BREDA') and further for directing the aforesaid respondent authorities to make payment of arrears of pension and other consequential benefits with effect from the date of his superannuation.

3. The brief facts of the case which led to the filing of the present writ petition are that the Government of Bihar in the Department of Energy constituted a Committee at the district level for appointment of Junior Engineer and Technician on sanctioned post under the Biogas Project. The Committee headed by the District Magistrate with Deputy Development Commissioner along with other officers of the State of Bihar, including the Joint Director (Biogas)/Assistant Director (Biogas) or a nominee of the Energy Department, and the District Agriculture Officer as its members were authorised to make recommendation for appointment in accordance with the reservation roster of the Government. In pursuant to the aforenoted decision, the Energy Department issued a

communication, as contained in Memo No. 3604 dated 25.08.1984, to all the concerned District Magistrates to ensure appointment in terms of the advertisement (copy of which are annexed as Annexure P-2 series to the writ petition). The petitioner being found himself eligible applied against the aforenoted advertisement and on being selected, he was appointed to the post of Junior Engineer vide Memo No. 3802 dated 11.10.1984 issued by the Collectorate, Samastipur. The petitioner submitted his joining and he was allowed to discharge his duty and on completion of 10 years of service, he was allowed the First Time Bound Promotion by the order passed by the Collectorate, Samastipur vide Memo No. 3223 dated 22.11.1997. In the meantime, the Bihar Renewal Energy Development Agency was constituted by the Bihar in its Energy Department vide Memo No. 786 dated 24.03.1987 and the services of the petitioner was transferred to BREDA vide order contained in Memo No. 2929 dated 09.01.2001. The petitioner was further allowed the benefit of post Pay Revision Commission with effect from 01.01.1986 and 6th Pay Revision Commission with effect from 01.01.1996.

4. After serving for about more than 27 years, the petitioner finally superannuated on 30.09.2013. However, when

the rightful claim of the petitioner for pension has not been acceded to, the petitioner approached before this Court in CWJC No. 24291 of 2013 for payment of his post retiral benefits. The aforesaid writ petition was disposed off vide order dated 14.08.2014 directing the BREDA to consider the claim of the petitioner on the basis of the rules so framed by them relating to service condition. The petitioner preferred Civil Review Application bearing Civil Review No. 308 of 2014 which came to be dismissed vide order dated 26.08.2015. The petitioner on being dissatisfied preferred LPA bearing No. 2031 of 2015 which finally came to be disposed off vide order/judgment dated 15.02.2017 with a direction to the State Government and/or BREDA to pass an appropriate order to consider the claim of the appellant, the petitioner herein for payment of pension in accordance with the applicable rules. Pursuant thereto, the petitioner submitted his representation but the respondent authorities did not take up the matter, compelling him to file a contempt application bearing MJC no. 3630 of 2017. However, during the pendency of the afore noted contempt petition, the respondent BREDA came out with the order contained in Memo No. 382 dated 08.03.2018 rejecting the claim of the petitioner for payment of pensionary benefits.

5. It is the contention of the learned Advocate for the petitioner that the aforenoted order dated 08.03.2018, which is put to challenge in the present writ petition, had never been served upon the petitioner and for the first time the petitioner came to know about it when counter affidavit was served upon him on 24.04.2023, on the date of hearing of the contempt petition. Thus, the contempt petition was consigned and disposed off with liberty to the petitioner to challenge the impugned order in an appropriate proceeding.

6. While assailing the impugned order, as contained in Anneuxre-11 to the writ petition, Mr. Kaushik, learned Advocate for the petitioner has taken this Court to the advertisement, in terms of which the petitioner was appointed, and submitted that it clearly prescribed that the appointment of the petitioner will be made in the pay scale of Rs. 850-1660/- on the solitary post of Junior Engineer with allowances admissible to the Government employees. The advertisement also contemplates the age relaxation and eligibility in accordance with the rules of the Government of Bihar. The petitioner was accorded the benefit of First Time Bound Promotion and also given the benefit of pay revision from time to time. The services of the petitioner, who was a permanent employee of the Department of

Energy, was transferred on deputation to BREDA and in such circumstances the petitioner being the employee of the State Government guided by the rules framed by the State Government viz Bihar Pension Rules, 1950, the petitioner is entitled to get all the pensionary benefits. However, the impugned order passed by the respondent BREDA is manifestly illegal and wholly without jurisdiction as the BREDA has absolutely no authority to decide the claim of the petitioner since the petitioner was the employee of the Government of Bihar in its Energy Department and was eligible for payment of pension under the Bihar Pension Rules, 1950. The finding given in the office order dated 08.03.2018 is manifestly illegal since the rules framed by the BREDA in the year 2017 are not at all applicable in the case of the petitioner, who was a Government employee.

7. Learned Advocate for the petitioner narrating the entire facts also contended that the reliance placed in the impugned order that all the posts, including the post of the petitioner, was transferred to BREDA vide resolution No. 786 dated 24.03.1987 and the office order No. 31 dated 04.04.1987 are thoroughly misconceived and misplaced. Reliance has also been placed on a decision rendered by this Court in the case of

Md. Naushad vs. The State of Bihar & Ors. (CWJC No. 392 of 2017), wherein the claim of the petitioner for his compassionate appointment has been turned down by the BREDA by treating the appointment of the father of the petitioner as Biogas Technician and later on after expiry of the scheme on the establishment of the BREDA, he was absorbed in the BREDA. The learned Court having taken note of the appointment letter and other materials on record has found that the appointment was made against the vacant post in the State Government and even if his services were transferred to BREDA, it was on deputation and as such directed the State Government to consider the grievance of the petitioner for compassionate appointment in accordance with law.

8. Learned Advocate for the petitioner further urged before this Court that irrespective of transfer of certain posts under Non-conventional Source of Energy Programmes to BREDA, the petitioner continued to work under the Samastipur Collectorate until he was transferred on 09.10.2001 vide order contained in Memo No. 2929. No option was given to the petitioner and therefore the transfer of services unilaterally would mean that the petitioner was transferred on deputation and the aforesaid order does not have eliminate the character of

the petitioner which was under the Government of Bihar in its Energy Department. To support the aforesaid contention, reliance has also been placed on a judgment rendered by the Apex Court in the case of ***State of Punjab and Ors. vs. Inder Singh and Ors, (1997) 8 SCC 372*** and further ***Umapati Choudhary vs. State of Bihar & Anr., (1999) 4 SCC 659*** on the point that the deputation can be aptly described as an assignment of an employee of one Department/Cadre or even an organisation to another Department/Cadre or organisation in public interest. The concept of deputation is consensual and involves a voluntary decision of the employee to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not.

9. The learned Advocate for the petitioner while making an alternative submission that in either of the case; be the petitioner an employee of the State or BREDA, the petitioner is entitled to get all the pre and post retirement benefits; and thus he drew the attention of this Court to the Memorandum and Article of Association of the BREDA, especially Article 12 which prescribes the Functions and Duties of the Managing Committee. Article 12.7 empowers the

Managing Committee to decide the Service Conditions, pay structure of the employee of the Agency on the same terms and conditions as and when prevailing in the State Government. The petitioner who superannuated from service in the year 2013 is, in no manner, guided by the rules subsequently framed in the year 2014 and 2017 by the BREDA. It is also contended that the service condition as per Article of Association would also remain the same despite transfer to BREDA and the subsequent rules in the year 2014 and 2017 would in no manner take away the vested right of the pension of the petitioner. In support of the contention aforenoted, heavy reliance has been placed on the judgment rendered by the Apex Court in the case of ***State of Punjab vs. Kailash Nath (1989) 1 SCC 321;*** as also the decision rendered in the case of ***Dr. G. Sadasivan Nair vs. Cochin University of Science and Technology*** reported as ***(2022) 4 SCC 404***.

10. Summarizing the aforenoted submissions, Mr. Kaushik, learned Advocate for the petitioner has lastly taken this Court to Rule 59 of the Bihar Pension Rules, 1950 which 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 and thus even

a person has worked in a temporary capacity but if his service on any duty is more than 15 years, then it must be considered as pensionable under Rule 59 of the Bihar Pension Rules, 1950. In this regard, learned Advocate placed reliance on a decision of the learned Division Bench of this Court in the case of ***The Registrar General, Patna High Court vs. Ram Vyas Dubey & Ors.*** [LPA No. 198 of 2016] disposed off on 26.06.2023.

11. Per contra, Mr. Prasoon Sinha, learned Advocate for the BREDA has taken this Court to Annexure R-3/C to the counter affidavit filed on behalf of the respondent Nos. 3 to 5 read with Annexures P1, P2B and P3 to the writ petition and contended that the appointment of the petitioner was made under National Bio-gas Development Scheme/Programme related to Non-Conventional Source of Energy at the district level on purely temporary basis as the claim of the petitioner that he was a permanent employee of the Department of Energy and subsequently on transfer to BREDA is completely incorrect and not acceptable.

12. It is contended that the appointment of petitioner and others were made under National Bio-gas Development Scheme/Programme and they were posted in different districts. Similarly, vide different letters issued subsequently by the

Energy Department categorically stipulating therein that the different programmes/plans which were on purely temporary basis and the post of Bio Gas Technician will continue till the State Government gets service charge from the Ministry of Non-Renewable Energy, Government of India. Subsequently, the Energy Department had taken a policy decision and resolved to constitute BREDA for the management, development and for implementation of the plans/programmes related to non-conventional source of energy in the State of Bihar. The resolution in this regard issued by the order of the Governor of Bihar as contained in Memo No. 786 dated 24.03.1987 makes it clear that with effect from the date of issuance of the said resolution all the posts created under the programmes/plans of Non-Conventional Source Of Energy shall be transferred to this Agency.

13. The BREDA undoubtedly is the society registered under the Society Registration Act, 1860 and the programmes in question were brought under the control of the BREDA. Pursuant to the resolution No. 786 dated 24.03.1987 the services of the Gazetted and Non-Gazetted Officers appointed on the aforesaid post were transferred to BREDA. After constitution of BREDA, the Additional Secretary, Energy Department,

Government of Bihar vide letter No. 4877 dated 13.12.2006 communicated the directions issued by the Finance Department to the Director, BREDA to ensure framing of service rules for the officers/employees of the BREDA and further to stop deducting the amount from salary of the employees against GPF, in whose favour GPF account number has been allotted from before and the accumulated amount be transferred in the CPF after framing of the service rules by the BREDA. On being aggrieved by the aforesaid decision, the Bihar State Non-Conventional Energy Technicians' Union has preferred CWJC No. 2118 of 2007 which came to be disposed off vide order dated 17.09.2007 directing the respondent State of Bihar as well as the BREDA to formulate the service rules for the employees working under the BREDA on priority basis, leading to framing of Service Rules, 2014. The Rule was also questioned in CWJC No. 2118 of 2007 by filing an Interlocutory Application on the premise that it does not account for all the circumstances and has not addressed various issues. However, no interference has been made and liberty was given to the petitioners that if they are aggrieved by any of the provisions of the Rule they are at liberty to challenge the same which led to filing of fresh writ petition being CWJC No. 19394 of 2015 and the Hon'ble Court having heard the parties declared the impugned provisions of Rule 13(iii) to (vi) as violative of the Articles 14 and 16 of the Constitution of India and quashed by order dated 13.07.2016.

14. In compliance with the order dated 13.07.2016 passed by the learned Court, amendments were made in the Article of Association of BREDA as well as in the Service Rules, 2014 and accordingly a new rules were substituted in place of the earlier rules known as BREDA Service Rules (Ammended) 2017. As per the amended rules each and every employee of the BREDA is covered under the EPF scheme also entitled to gratuity under the Payment of Gratuity Act, 1972. There is no provision in the BREDA Service Rules (Ammended), 2017 for payment of pension to the employees on the BREDA. The aforesaid rules has never been questioned and still hold the fields good.

15. Mr. Abbas Haider, learned Standing Counsel No. 6 reiterated and reaffirmed the submissions made on behalf of the learned Advocate for the BREDA and, in fact, similar stand has been taken in the counter affidavits filed by both the respondents in support of the impugned order treating the petitioner to be an employee of the BREDA.

16. This Court has given a patient hearing to all the

learned Advocates for the respective parties and also meticulously perused the materials available on record.

17. Admittedly, the petitioner was appointed by the Deputy Development Commissioner, Samastipur on the recommendation of the District Level Selection Committee under the Chairmanship of the District Magistrate. The appointment letter as appended to the writ petition would clearly demonstrate that the appointment of the petitioner in terms of the advertisement against the post of Junior Engineer was made against the sanctioned and vacant post in the pay scale of Rs.850-1660 with allowances admissible to Government employees. The entire process of selection was undertaken on the direction of the Government of Bihar in the Department of Energy. On being selected, the petitioner submitted his joining in the Collecorate, Samastipur and further the petitioner was allowed the First Time Bound Promotion vide Annexure-P-4.

18. While the petitioner was working under the Collectorate, Samastipur, in the meantime, the BREDA was constituted by the Government of Bihar in its Energy Department vide Mmeo No. 786 dated 24.03.1987. Despite the formation of the BREDA, the petitioner was allowed to continue on the earlier post and for the first time the petitioner was

transferred to BREDA vide order contained in Memo No. 2929 dated 09.10.2001. It is also the admitted position that the petitioner had passed Hindi Noting and Drafting Examination and he was allowed the benefit of 5th Pay Revision Commission with effect from 01.01.1986 and 6th Pay Revision Commission with effect from 01.01.1996.

19. This Court has also perused the resolution No. 786 dated 24.03.1987 as also the office Order No. 31 dated 04.04.1987 which certainly demonstrates that certain posts under Non-conventional Energy Source Programme were transferred to BREDA. However, the petitioner was allowed to continue to work under Samastipur Collectorate until he was transferred on 09.10.2001. The order contained in Memo No. 2097 dated 10.08.2001 only talks about the transfer of the services of the petitioner, there is no order of absorption by the BREDA in so far as the service of the petitioner is concerned.

20. It is also note worthy that the BREDA is a society registered under the Society Registration Act, 1860 and all the programmes in question were brought under the control of the BREDA. The BREDA is governed by the Board of Directors and the services of the employees of BREDA were being duly governed by the Memorandum and Article of Association of

BREDA, Patna. On perusal of the Article of Association, there is no confusion to accept its contents that the Board of Directors has taken a decision to decide the service condition, pay structure of the employees of the Agency on the same terms and conditions as and when prevailing in the State Government. The petitioner was all along getting the pay scale and other allowances at par with the employees of the State Government and after his superannuation, the petitioner was authorised to draw his GPF amount by the GPF Directorate, Patna, like any other government servant. Even if the contention of the respondent State and BREDA would be accepted that the services of the petitioner were transferred to BREDA in terms of Clause 12.7 of the Memorandum and Article of association of BREDA the service conditions were to be decided by the Managing Committee on the same terms and conditions as and when prevailing in the State Government. There is no hesitation to reiterate the settled principle of law that the service condition of an employee ought not have been changed to his disadvantage.

21. In the case of ***Kailash Nath*** (supra), the Hon'ble Supreme Court in paragraph nos. 6 and 7 seemingly held that no embargo should be provided beyond the field covered by the

substantive provision. The Hon'ble Supreme Court in the case of ***Dr. G. Sadasivan Nair*** (supra) has crystalized the issue by holding that it is a settled position of law that the Rules applicable in matters of determination of pension are those which are in force at the time of retirement. However the Court further observed that it does not mean that the employer can depart from his principle arbitrarily and confer benefit of Rules in force at the time of appointment, for computation of pension upon one employee and deny the same benefit to another employee who is similarly situated. The aforenoted decisions rendered by the Apex Court ruled that the service condition ought not to have been changed to the disadvantage of the employee.

22. Now coming to the fact that the appointment of he petitioner was only temporary for the purposes of implementation of the programmes/plans related to Non-Conventional Source of Energy and for the said purpose neither any post was ever created nor was ever sanctioned for regular establishment under the Collectorate/District Magistrate, the same does not find force for the simple reason that nonetheless the appointment of the petitioner was initially made on temporary basis subject to confirmation and progression in

service career; but once the petitioner has been allowed the Time Bound Promotion and the benefit of subsequent revision and even accorded the benefit of GPF after his superannuation, this plea is not available to respondents. If this Court comes to the conclusion that the very appointment of the petitioner was against a substantive sanctioned and vacant post of Junior Engineer to supervise the programme/plan of Non-Conventional Source of Energy by the Government of Bihar in the Department of Energy, there is no hesitation to uphold that the transfer of service of the petitioner in BREDA can only be treated as deputation. Suffice it to encapsulate the mandate of the Hon'ble Supreme Court as ruled in the case of ***Umapati Choudhary*** (supra) that the deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one Department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organization. The necessity for sending on deputation arises in public interest to meet the exigencies of public service. the Hon'ble Supreme Court made it clear that the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. However, in the case in hand, there is no material to suggest that at any point of time consent of the petitioner was taken and thus his service could not have been unilaterally transferred without his consent by imposing a service condition to the disadvantage of the petitioner.

23. This Court while dealing with an identical matter, though in relation to an employee who was appointed against the vacant and sanctioned post of Bio Gas Technician in the Government pay scale with other admissible allowances, however, on account of his death during his service period, when his dependent has not been offered appointment on compassionate ground he approached before this Court in CWJC No 392 of 2017; the claim of the dependent for Bio Gas Technician was resisted on the ground that there was no scheme of compassionate appointment prevalent in the BREDA. However, the Court after giving a glance to the letter of the appointment of the petitioner clearly observed that the appointment letter in no way makes any whisper that it was made under the scheme of the Central Government, rather it very clearly mentions that the appointments made was against

the vacant sanctioned post in the State Government in the then pay scale.

24. The learned Court further observed that other important aspect of the matter which demolishes the stand of the respondents is that there is no order of absorption by the BREDA in so far as the service of the father of the petitioner is concerned. Thus, the Court held that the father of the petitioner was an employee of the State Government in its Energy Department and even if his services were transferred to BREDA it was on deputation and thus in absence of the provision in the regulation in respect of compassionate appointment Rule 270 of the Bihar Service Code is also eloquent and does protect the right of the deceased employee for a death on a deputation would not make him an employee of the BREDA, rather he would continue to hold lien with the State Government.

25. The identical is the situation here. Once the Court finds that the very appointment of the petitioner was not under the scheme of the Central Government rather against the vacant post in the State Government in the prescribed pay scale leading to Time Bound Promotion and revision of pay scale as par with the Government employee, there is no hesitation to hold that the transfer of the petitioner was on deputation by holding a lien

with the State Government. So far the contention of the State and the BREDA to the extent that the services of the petitioner would be governed under Rule 2014 or the Amended Rule 2017 also does not find force as the same would not be applicable to the case of the petitioner; who had already been superannuated on 30.09.2013; the right to pension could not have been taken away by a rule coming into force subsequently. A vested right of an employee cannot be divested by a subsequent rule is a settled law.

26. In the discussions made hereinabove, this Court is hereby hold that the lien of the petitioner shall remain intact in the Energy Department and even if he was transferred to BREDA that shall be deemed to be a posting on deputation and in no circumstance the BREDA could have been allowed to alter the terms and conditions of the service to the disadvantage of the petitioner who was appointed prior to formation of BREDA.

27. In that view of the matter, the impugned order, as contained in Memo no. 382 dated 08.03.2018 and other consequential orders are hereby set aside. This Court directs the respondent State authorities, especially the respondent no. 2 to make payment of arrears of pension admissible to the petitioner with effect from the date of his retirement by treating him to be

an employee of the State Government, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

28. The writ petition stands allowed.

29. There shall be no order as to costs.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	AFR
CAV DATE	24.09.2024
Uploading Date	12.12.2024
Transmission Date	NA