

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13646 of 2023

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Rajni Kant Arun Son of Late Krishna Kant Prasad Resident of House No. 337, Road No. 31, New Patliputra Colony, P.S.- Patliputra, Patna- 800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Information and Public Relation Department, Government of Bihar, Patna.
2. The Director, Information and Public Relation Department, Government of Bihar, Patna.
3. The Dy. Director (Accounts) cum Drawing and Disbursing Officer, Information and Public Relation Department, Government of Bihar, Patna.
4. The Under Secretary, Information and Public Relation Department, Government of Bihar, Patna.
5. The Accountant General, A and E, Bihar, Mahalekhakar Bhawan, Birchand Patel Bhawan, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Manisha Singh, Advocate

Ms. Supragya, Advocate

For the Respondent/s : Mr. Abhishek Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 20-01-2025

This Court has heard Ms. Supragya, learned Advocate for the petitioner and Mr. Abhishek Singh, learned Advocate for the State.

2. The petitioner, who superannuated on 31.12.2022, as a Member of Mode Mandali from the Department of Information and Public Relation, Government of Bihar has approached this Court seeking a direction upon the respondents concerned to count his services from the date of his joining, i.e., 26.05.1992, till the date of his superannuation on 31.12.2022,



for the purposes of payment of pension and other terminal benefits, such as gratuity, leave encashment, provident fund etc. The petitioner is also aggrieved with the letter dated 18.07.2023, the copy of which is marked as Annexure-4 to the writ petition, whereby the concerned respondent has held the petitioner not entitle for pension, in view of Rule 58 and 61 of the Bihar Pension Rules, 1950 (hereinafter referred to as, “Rules, 1950”).

3. The necessary facts as culled out from the materials available on record, in brief, are as follows:

(i) The petitioner was duly appointed as a member of Mode Mandali Yatra Party (Entertainment Group) on ad hoc basis for six months vide office order issued by the Director, Information and Public Relation Department under Memo No. 919 dated 23.05.1992 in the pay scale of Rs. 1200-1800/-.

(ii) In pursuant to the order aforementioned, the petitioner submitted his joining. The services of the petitioner was extended till further order vide office order contained in Memo No. 196 dated 27.01.1993.

(iii) The petitioner was accorded all the service benefits, including the benefit of Provident Fund and group insurance scheme from the date of joining. The petitioner was also allowed the replaced revised pay scale of Rs. 4500-7000/-



with effect from 01.04.1997 and further the benefit of 6th Pay Revision in the pay band of PB-1 (5200-20200) with grade pay of Rs. 2800/- with effect from 01.04.2007. Subsequently, the benefit of 7th Pay Revision in the pay scale of Level-5 with the basic pay of Rs. 57500/- was also extended, until his superannuation.

(iv) The services of the petitioner along with other similarly situated persons were duly regularized and taken in the cadre of Bihar Information and Public Relation Department vide office order no. 77 dated 10.03.2017, with effect from the date on which the Bihar Information and Public Relation Department Artists Cadre (Recruitment and Service Conditions) Rules, 2017 was notified.

(v) The petitioner having attained his age of superannuation, retired from the aforesaid post on 31.12.2022. The petitioner on being superannuated submitted his application in prescribed format, requesting for payment of pension, which has turned down by the concerned respondents with a clear stipulation that the petitioner does not fulfill the conditions laid down in Rule 58 and 61 of the Rules, 1950 vide order contained in Letter dated 18.07.2023, which is put to challenge before this Court.



4. Ms. Supragya, learned Advocate for the petitioner assailing the impugned order and the action of the respondents, primarily has taken this Court through the Rule 58 of the Rules, 1950. It is contended that the petitioner's request for pension could have only been considered on fulfillment of three conditions that the service must be under the Government, on substantive and permanent post, and paid by the Government. The impugned order admitted the position that the petitioner was working in Bihar Information and Public Relation Department and thus, inevitably working under the Government; and secondly, he was being paid his salary in the prescribed scale by the State Government. The very basis of negating the claim of the petitioner for pension is said to be non-fulfillment of the condition that he was holding substantive and permanent post.

5. To controvert, reasoning and the basis assigned by the concerned respondent, it is contended that the service of the petitioner was continuous for 30 years without any break or interruption. Once the service was extended, after the lapse of first six months in January, 1993, which was done for an indefinite period, until further order. No further order with respect to the petitioners services were passed and the petitioner



was allowed to superannuate with all the perk and privileges at par with the regular employees.

6. Based upon the past services of the petitioner and considering that he had diligently spent many years with department, and now there is no other source of income left for him, he has taken into regular cadre upon regularizing his services vide order dated 14.07.2017 (Annexure-2 to the writ petition). The payment of salary on scale as regular Government employee along with dearness allowance, provident fund as well as GIC contribution clearly suggest that he has always been treated as a regular employee under the State Government. Allowing the benefit of 5th Pay Revision, 6th Pay Revision as well as 7th Pay Revision leaves no stretch of imagination that his services was temporary and ad hoc, once finally taken into regular cadre upon regularization of his services.

7. It is further urged before this Court that the contribution to the GPF from June, 1992 strengthen the case of the petitioner, in view of Rule 4 of Bihar General Provident Fund Rules, 1948 which clearly stipulates that only permanent employees are required to make contributions from the first month of service. The case of the petitioner is said to be entirely covered by a Bench decision of this Court in the case of ***Daroga***



Yadav Vs. State of Bihar and Ors., CWJC No. 3872 of 2006, wherein the learned Court has duly explained the definition of substantive and permanent post qua the Rule 58 of the Rules, 1950.

8. To support the contentions raised before this Court, Ms. Supragya learned Advocate for the petitioner placed further reliance on decision of the Hon'ble Supreme Court in the case of *Vinod Kumar & Ors. Vs. Union of India & Ors., (2024) INSC 332*, and further *Rajkaran Singh & Ors. Vs. Union of India & Ors., (2024) INSC 621*, especially para 27 to 34. Learned Advocate for the petitioner urged that Hon'ble Supreme Court in the case of *Jaggo Vs. Union of India, (2024) INSC 1034* has carved out a distinction from the case of *Secretary, State of Karnataka Vs. Umadevi, (2006) 4 SCC 1*, while distinguishing the irregular/temporary employments from illegal appointments. In no imagination, the services of the petitioner can be said to be an illegal appointment.

9. While concluding the submission, learned Advocate has placed before this Court 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., in LPA No. 198 of 2019*, wherein, the learned Court while affirming the



order of the learned Single Judge has ruled 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 Rules, 1950.

10. Mr. Abhishek Singh, per contra, to substantiate the impugned order and action of the respondent has vehemently contended that there is no provision under Rules, 1950 to reckon the ad hoc service of employee as pensionable service, unless the government servant qualify the conditions, as provided under Rule 58, thereof. Admittedly, the petitioner was not holding the substantive and permanent post. Moreover, the service of the petitioner was regularized vide office Order No. 77 dated 10.03.2017 with effect from 21.02.2017, the date on which the aforementioned Rules, 2017 came to be notified. The petitioner has served the department as regular and permanent employee, only for about five years and ten months. Referring to Rule 145 of the Rules, 1950, he further contended that since the petitioner could not complete the minimum qualifying service of ten years, in any view of the matter, he is not entitled to get pension and gratuity. So far the GPF and group insurance are concerned, the petitioner has already been paid the same.



11. To support the aforesaid contention, learned Advocate for the State also refer to Rule 61 of the Rules, 1950, which provides that the service does not qualify, unless the government servant holds substantively post on a permanent establishment. Reliance has also been placed on a Full Bench decision of this Court in the case of ***State of Bihar & Anr. Vs. Bhagwan Singh (since dead), (2014) 4 PLJR 229***, wherein, the learned Full Bench of this Court taking note of the relevant rules of Bihar Pension Rules, 1950 has held that the services rendered by an employee as daily wager cannot be said to be a service for which the said employee was paid from general revenue from the State Government or the service rendered on a substantive post in a permanent establishment. Such service, although was followed by absorption on regular establishment will not qualify for pension. It is lastly contended that the identical claim of the daily wagers employee, ***Girja Nandan Sharma*** has also been turned down by this Court in ***CWJC No. 528 of 2015***, in the light of the ruling of the Full Bench judgment in the case of ***Bhagwan Singh*** (supra).

12. This Court has given anxious consideration to the submissions advanced on behalf of the respective parties and also perused the materials available on record as well as the



relevant rules.

13. Facts are not in dispute that the petitioner was appointed on ad hoc basis on the fixed pay scale along with applicable DA and other allowances and was paid regular salary by the Government of Bihar on such scales, as and when revised without any interruption for almost 30 years, till the petitioner superannuated. The petitioner all along has been allowed the benefit of GPF and GIC.

14. The claim for regularization of the petitioner along with others were duly considered by the concerned department and one of the basis for such regularization and bringing them in regular cadre was the past continuous service of the petitioner and others, leading to issuance of the order of regularization vide order dated 14.07.2017.

15. This Court has gone through the impugned order; while rejecting the claim for pension of the petitioner, the concerned respondent has admitted that the petitioner fulfills the condition of Rule 58 of the Rules, 2005, except the condition (2) thereof, which mandates that the employment of the government servant must be substantive and permanent. Thus, the claim of the petitioner has been turned down, in view of Rule 58 and 61 of the Rules, 2005. The continuous service for a pretty long time



under the government, subscribing all the admissible remuneration paid by the government and consideration of the past service for regularization is essential and more than sufficient for establishment of substantive and permanent employment.

16. The learned co-ordinate Bench of this Court in the case of ***Daroga Yadav*** (supra) in an identical situation, where the claim of the petitioner of the said case for pension has been refused, despite his continuous 34 years of service, leading to regularization, has held that continuous service of the petitioner for such a long period, which was also made the basis for his regularization clearly demonstrates that it had all the parameters of a substantive post and thus, held the petitioner would be entitled for counting his services right from inception till his superannuation, as qualifying service for the purpose of fixation of pension and other pensionary entitlements.

17. It would be significant to note that the Hon'ble Supreme Court in the case of ***Vinod Kumar*** (supra) has categorically observed that the essence of employment and the rights thereof, cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the



appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. The Hon'ble Court while adjudicating the issue with regard to the non consideration of regularization and absorption in the post of Accounts Clerk, against which they were temporarily appointed and continued for a period of 25 years, while allowing the appeal held that the failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.

18. The issue regarding non-payment of pension on account of the incumbent being not a government employee and had not been appointed by following any recruitment rules, despite rendering the services for more than two decades, came up for consideration before the Hon'ble Supreme Court in the case of *Rajkaran Singh & Ors.* (supra) wherein, the Hon'ble Court taking note of the fact that the appellants were appointed on a regular pay scale and were allowed the other benefits,



including grant of Assured Career Progression held such long-term service, suggesting a level of permanence and integration into the governmental structure, belying their classification as temporary employees. The Hon'ble Supreme Court referring to the earlier decision in the case of ***Vinod Kumar & Ors.*** (supra) held that; the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time, has opined that the denial of pensionary benefits to the appellants is not tenable or justifiable in the eyes of law, on being found the same is arbitrary and violates the fundamental rights as guaranteed by Articles 14 and 16 of the Constitution of India.

19. It would be also worth noticing the decision of the Hon'ble Supreme Court in the case of ***Jaggo Vs. Union of India*** (supra), wherein, the claim of the appellants for their regularization in Central Water Commission were refuted on account of their appointments not being made against sanction post and without fulfilling the requisite condition and, as such, contrary to the dictum of the Constitution Bench judgment in the case of ***Secretary, State of Karnataka Vs. Umadevi*** (supra) has held in paragraph nos. 20, 26 and 27, as follows:-

“20. It is well established that the decision in ***Uma***



Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar and Ors. Etc. Vs. Union of India & Ors., it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed “temporary” but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering



certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”

26. While the judgment in **Uma Devi** (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in **Uma Devi** (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and



fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country.”

20. Coming to the case in hand, admittedly, the petitioner has served the department for about 30 years, which led to the regularization of his services. Rule 59 of the Bihar Pension Rules, 1950 empowers the State Government that in certain cases, even though the conditions, as enumerated under Rule 58, especially condition (i) and (ii) thereof, are not fulfilled, the Government may provide that the services rendered by a Government servant shall count for pension. The learned Division Bench of this Court in the case of **Ram Vyas Dubey** (supra) considering the conditions, as stipulated in Rule 58 of the Rules, 1950 viz-a-viz, the power as provided under Rule 59 has held 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.

21. The petitioner has all along been provided regular salary in the prescribed pay scale with the pay revision, time to time, applicable at par with the regular employees of the State



Government. The deduction from the salary of the petitioner, under General Provident Fund, from inception, till his superannuation, in terms of the prescription of the Bihar General Provident Fund Rule, 1948 also strengthened the case of the petitioner. Rule 4 of the Rules, 1948 explicitly provides that only permanent government employees are eligible to make contributions towards Provident Fund from the beginning of service.

22. So far the reliance placed by the learned Advocate for the State on a decision rendered by the Full Bench of this Court in the case of ***Bhagwan Singh*** (supra) as well as the decision in the case of ***Girja Nandan Sharma*** (supra) are concerned, these are not applicable in the facts of the case, herein, as the petitioners therein were daily wage employees and they had been working on a fixed wages and, as such, they were, thus rightly held not qualified for pension, on account of non adherence to any conditions stipulated under the Bihar Pension Rules, 1950; whereas, the case of the present petitioner is entirely different as discussed, hereinabove. The materials enumerated clearly elucidate the petitioner fulfills all the conditions, *sine qua non*, for making him entitled for pension under Rule 58 of the Rule, 1950.



23. In view of the discussions made hereinabove, this Court finds substance in the present writ petition. Accordingly, the impugned order, as contained in letter dated 18.07.2023 (Annexure-4) is hereby set-aside. The concerned respondent is directed to grant pension and other terminal benefits, after counting the services of the petitioner, from the date of his joining, till the date of his superannuation. The entire exercise must be completed, preferably within a period of twelve weeks, from the date of receipt/production of a copy of this order.

24. The writ petition stands allowed. Pending applications, if any, also stands disposed off.

25. There shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	09.01.2025
Uploading Date	21.01.2025
Transmission Date	NA

