

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2573 of 2021

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Jagnarayan Singh, Son of Late Raj Ballam Singh, Resident of Village and P.O.-Nasratpur, Near Mahadeo Mandir, P.S.-Sandesh, District-Bhojpur at Ara, the retired Sukani, Office of the Executive Engineer, National Highways, Mechanical Planning Division, Road Construction Department, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, National Highways Mechanical Circle, Road Construction Department, Patna.
5. The Executive Engineer, National Highways, Mechanical Planning Division, Road Construction Department, Patna. ...Respondents 1st set
6. The Accountant General, Bihar, Patna.

....Respondents 2nd set

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar Manglam, Advocate
For the State	:	Mr. Mahendra Prasad Verma, Advocate
For the AG	:	Mr. Raj Nandan Prasad, Advocate
		Mr. Vishesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-07-2026

Heard learned counsel appearing on behalf of the

petitioner; learned counsel for the State and learned counsel for

the Accountant General.

Re.: I.A. No. 02 of 2025

2. Learned counsel appearing on behalf of the

petitioner by filing the present interlocutory application seeks

amendment in Para-1 of the writ petition by adding additional



relief as stated in Para-6 of the present interlocutory application.

3. Having considered the information contained in the interlocutory application and the grounds mentioned therein and the affidavit, I find that there are sufficient reason to allow the amendment of the prayer as prayed in Para-1 of the writ petition by adding additional relief as stated in Para-6 of the interlocutory application. The petitioner/office is directed to take necessary steps to amend the cause title of the writ petition.

4. I.A. No. 02 of 2025 is, accordingly, allowed.

Re.: C.W.J.C. No. 2573 of 2021

5. The petitioner in paragraph no. 1 of the present writ petition has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

"For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondent authorities for calculation and payment of revised retiral benefits to the petitioner treating him to be in service of the State with effect from the date of his joining i.e. 09.07.1981 which has been wrongly calculated by the respondent authorities for payment of retiral benefits to the petitioner after his retirement on 31.10.2019.

(ii) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the respondent authorities for payment of revised pensionary benefits to the petitioner with interest on delayed payments on the ground that if the petitioner was appointed against a permanent post on regular basis in the year 1981, there can be no reason for the respondents to deny the payment of full pension, gratuity and other retiral benefits as the petitioner has superannuated much after he had completed 33 years of his service from the date of his initial appointment and thus is entitled for payment of full pensionary benefits.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and



circumstances of the case."

6. Thereafter the petitioners filed I.A. No.2 of 2025 for modification of the prayer made in the writ application, *inter alia*, seeking following relief(s):

"For issuance of an appropriate writ in the nature of Certiorari for quashing the letter dated 22.04.2025 passed by the respondent no.2 and contained in memo no.3258 dated 22.04.2025 issued under the signature of Engineer-in-Chief, Road Construction Department, Bihar, Patna whereby and whereunder the respondent no.2 has directed to treat the petitioner as an employee under the work charge establishment until his regularization by the department against a sanctioned and vacant post in 2015 and for payment of retiral dues accordingly."

7. Learned counsel appearing on behalf of the petitioner submitted that in compliance of the order dated 21.10.2024 of this Court, the Additional Chief Secretary, Road Construction Department has passed the order contained in Memo No.3258 dated 22.04.2025, rejecting the claim of the petitioner, without considering the fact that in paragraph no.6 of the second supplementary counter affidavit, it has been admitted by the Department that the Road Construction Department, Government of Bihar has issued order No.74 dated 30.03.2015 and Memo No.511 dated 26.08.2015, whereby the service of the petitioner was regularized with effect from the date of issuance of the aforesaid order dated 30.03.2015 and in



paragraph no.7, it has further been clarified that due to inadvertence, an office order No.05/19 dated 11.01.2019 came to be issued, whereby the benefit of time bound promotion was given to the petitioner with effect from 09.07.1991 in spite of the fact that he was under work charged establishment and not in a regular service.

8. Learned counsel further submitted that the impugned order is also required to be interfered with, considering the provisions of Sections 58 and 59 of the Bihar Pension Rules. The aforesaid fact has not been clarified in the impugned order. In the absence of any determination by the Additional Chief Secretary (Respondent No. 2) as to the reasons for not extending the benefit of Rules 58 and 59 to the petitioner, the petitioner has challenged the impugned order. Such non-consideration renders the impugned order unsustainable in law and warrants interference by this Court. In this regard, learned counsel has placed reliance upon a judgment of a Division Bench of this Court in case of ***The Registrar General, Patna High Court Vs. Ram Vyas Dubey & Ors. (LPA No.198 of 2016)***.

9. *Per contra*, Mr. Mahendra Prasad Verma, learned AC to SC 20, appearing on behalf of the State has submitted



that the order impugned is well considered and has been passed after giving due opportunity of hearing to the petitioner and it does not require to be interfered in any manner, as already in the second supplementary counter affidavit, the respondents have answered reasons that due to inadvertence, office order no.05/2019 dated 11.01.2019 was issued, extending the benefit of time bound promotion to the petitioner with effect from 09.07.1991 and it was specially clarified in the said office order that if the promotion of the petitioner is found to be wrong in future, the excess payment shall be recovered from the petitioner. He contends that the petitioner having not challenged the said office order, nor raised such objection before the Additional Chief Secretary, now after passing of the impugned order which is based on the determination of the facts, as well as, law, don't require to be interfered by this Court.

10. Having heard the rival submissions made by the parties, regards to the facts and circumstances of the case and having perused the relief, as prayed for in the present writ petition and in the amendment petition/interlocutory application. The petitioner has not challenged the office order dated 11.01.2019 (Annexure A to the 2nd supplementary counter affidavit), however, in absence of any order of the State



Government or the competent authority without withdrawing or nullifying the said order, mere statement in the counter affidavit will not suffice the stand of the State Government. At the same time, I find that no determination has been made or answer has been given on this point by the Additional Chief Secretary in his impugned order, rejecting the claim of the petitioner. The petitioner claims that his total period of service must be counted from the date of his joining. I find it apt to refer the judgment passed by the Division Bench of this Court in case of ***The Registrar General, Patna High Court (supra)***, wherein in paragraph no.12, it has been held that “*that Rule 59 of the Bihar Pension Rules, 1950 is an enabling provision which operates as an exception to the general conditions contained in Rule 58. It has been held that the continuous temporary or officiating service of a Government servant for more than fifteen years, even in the absence of confirmation on a substantive post, is liable to be treated as pensionable in terms of Government Memo No. Pen-1024/69/11779 F. dated 12.08.1969.*”

11. I find that the Additional Chief Secretary has completely given go-by to the provisions of Rules 58 and 59 of the Bihar Pension Rules, 1950 and has not considered that the



petitioner was also regularized. The impugned order requires to be re-considered. Accordingly, the impugned order, contained in Memo No.3258 dated 22.04.2025 is hereby set aside and quashed.

12. Since the petitioner had already superannuated on 13.10.2009, if so advised, he may take steps in accordance with law. In such case, the Additional Chief Secretary shall, after affording the petitioner due opportunity of hearing, pass a reasoned and speaking order in accordance with law within a period of three months from the date of receipt/communication of this order. Upon such determination, all consequential and admissible retiral benefits, if found payable, shall be paid to the petitioner.

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

14. The Interlocutory Application (s), if any, shall also stand disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	16.07.2026
Transmission Date	NA

