

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.198 of 2016

In

Civil Writ Jurisdiction Case No.15761 of 2013

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The Registrar General, Patna High Court

... .. Appellant/s

Versus

1. Ram Vyas Dubey S/o Late Ram Kripal Dubey, Resident of Mohalla New Bangali Tola, Near Bus Stand Road, Patna, P.O. G.P.O., P.S. Jakkanpur, District Patna.

(Petitioner)/Respondent - 1st set
2. The State of Bihar through the Secretary Law Department Government of Bihar, Patna
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Accountant General, Bihar, Patna.

... .. (Respondents) / Respondents - 2nd set.

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Advocate
For the Respondent no.1 : Mr. Sunil Kumar Singh No. III
For the State : Mr. Birju Prasad, GP 13
Mr. Amresh, AC to GP 13
For the A.G., Bihar : Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 26-06-2023



counsel for the respondents.

2. The instant appeal has been preferred by the writ respondent no. 2 – appellant against the order dated 12.11.2014 passed in C.W.J.C. no. 15761 of 2013.

3. The case of the writ-petitioner in brief is that he was appointed as a Daily Wage (Literate) Mazdoor in the office of the appellant on 18.4.1985. Having passed the prescribed test and having cleared the interview, he was appointed as Ex-Cadre Assistant on 18.3.2004 and retired on 31.10.2010. Having worked continuously for more than 25 years in office, he filed representations before the appellant, however, finally by the impugned letter dated 10.7.2012 the writ petitioner was held to be not entitled for grant of pension on account of the fact that the period of his service was less than 10 years. The writ petitioner as a result challenged the same by filing a writ application (C.W.J.C. no. 15761 of 2013) praying therein that the letter dated 10.7.2012 debarring the writ petitioner from pension on account of his regular service being less than 10 years be quashed and the pension amount be determined as he had retired on 31.10.2010.

4. Counter affidavit was filed by the respondents.

5. Taking into account the material on record and the



submissions made, the learned Single Judge by his order dated 12.11.2014 directed the respondents to consider the period of service rendered by the writ-petitioner from May 1988 to 10th August 1994, to add the same to the period of writ petitioner's service from 18.3.2004 to 31.10.2010 and, thereafter, to calculate the period and compute and release the pension without unnecessary delay. The writ application was disposed of.

6. It is against this order that the writ respondent no. 2 – appellant has preferred the instant appeal.

7. Learned counsel for the appellant submitted that the learned Single Judge failed to appreciate that the writ petitioner was not entitled for pension in view of the fact that he had not completed 10 years of regular service as permanent employee. For the period from 1988 to 1994, although the writ petitioner had worked as regular employee but the order of regularization was recalled and the petitioner was again placed as Daily Wage Employee. The writ petitioner had rendered 18 years 11 months as Casual Literate Mazdoor / Daily Wager and only 6 years 7 months 13 days as a permanent employee and thus in the light of the Bihar Gazette dated 23.9.2009 as per which a minimum period of ten years regular service is required



for getting pension, the writ-petitioner was not entitled for the same. It was submitted that Rules 59 and 63 of the Bihar Pension Rules, 1950 were not applicable in case of the writ petitioner.

8. Learned counsel for the writ petitioner – respondent submitted that the order of the learned Single Judge was a well-reasoned order which had taken into consideration Rule 58 of the Bihar Pension Rules as also the Government letter dated 12.8.1969. There is no illegality in the said order and there being no merit in the instant appeal, the same be dismissed.

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.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-

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