

(2020) 09 PAT CK 0332

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 2188 Of 2017

Amol Prasad Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Sept. 25, 2020**Acts Referred:**

- Bihar Pension Rules, 1950 - Rule 58, 59

Hon'ble Judges: Dinesh Kumar Singh, J**Bench:** Single Bench**Advocate:** Sunil Kumar Karn, Mahendra Prasad Verma, P. K. Rajgirhar**Final Decision:** Allowed

Judgement

Heard learned counsels for the petitioner, respondent-State and Accountant General, Bihar.

The present writ application has been filed for a direction to the respondents to make payment of pension and other retiral benefits to the petitioner

who retired from the post of Caretaker under the Work-charged establishment, Building Division, Patna in the Building Construction Department. The

relief as claimed by the petitioner in paragraph 1 of the writ application reads as follows:

“(i) By way of this writ application petitioner seeks indulgence of this Hon’ble Court for issuance of appropriate writ/order/direction upon the

respondents to make payment of following retiral dues/benefits to the petitioner who retired from service with effect from 29.2.2012 while working on

the Post of Caretaker (Karya Parveshak) under work charge establishment in the Building construction Department, Building Division, Patna

(a) To make payment of monthly pension

(b) To make payment of gratuity amount

(c) To grant benefit of A.C.P.

(d) To make payment of arrears of pension and gratuity

(ii) For any other appropriate order orders to which the petitioner is found to be entitled to in the facts and circumstances of the case.â€

It is submitted by learned counsel for the petitioner that the petitioner was appointed on the post of Caretaker vide letter no. 6938 dated 7.12.1981,

issued under the signature of the Superintending Engineer, in the Work-Charged establishment of South Bihar Circle, Building Construction

Department. The petitioner retired, after serving for about 29 years, on 29.2.2012. During the service period, the petitioner was granted time bound

promotion and other increments granted to regular employees and his GPF deductions were also made like a regular government servant. However,

the services of the petitioner were not regularized, in spite of the fact that he filed a writ application being CWJC No. 5519 of 2014, which was

permitted to be withdrawn vide order dated 22.10.2014, as contained in Annexure 1, with a liberty to approach the competent authority for redressal of

grievances. Consequently, the petitioner represented before the Principal Secretary, Building Construction Department vide representation dated

2.12.2014, but till date the representation of the petitioner has not been disposed of.

It is further submitted that one Md. Matin, having similar grievance, preferred CWJC No. 24532 of 2003 which was allowed by learned Single Judge

vide order dated 15.10.2014. However, the State Government preferred appeal against the said order being LPA No. 1211 of 2015 which was

dismissed vide order dated 23.6.2016 by a Division Bench of this Court. Thereafter, necessary direction was issued for payment of pensionary

benefits to Md. Matin after absorbing him in regular establishment. Similar orders were passed in several other writ applications for such

consideration. Learned counsel further submits that the service of a Government Servant though does not qualify for the pension unless it conforms to

three conditions :- first, that his service must be under government, second, his employment must be substantive and permanent and third, the service

must be paid by the Government, as provided under Rule 58 of the Bihar Pension Rules, 1950 (hereinafter referred to as the Rules). However,

exception has been provided under Rule 59 of the Rules, which stipulates that in case where the third condition, i.e., the service must be paid by the

Government, is fulfilled, while the first and second condition (as provided under Rule 58) do not get fulfilled, the Government may direct for counting

of such service for the grant of pension and consequently, keeping in view the provision under Rule 59 of the Rules, the Government has taken

decision vide Memo No. Pen 1024/69/11779 F, dated 12.8.1969, which reads as follows:

“Regarding:- Declaration of temporary service of a Government servant who is not confirmed as pensionable.

Under the existing pension rules, a temporary Government service 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 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 had, 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.”

However, it is submitted that now in view of the judgement delivered by the Full Bench of this Court in the case of Mobina Khatoon Vs. The State of

Bihar and Anr., reported in 2019(1) PLJR 1015 ,the work-charged employee who has completed ten years or more years of continuous service

against one post in the work-charged establishment, will be entitled for pension and his family in case of death of such work-charged employee, would

be paid the family pension.

In the present case, the petitioner has worked for about 29 years in service. Similarly, the other Full Bench judgement in the case of Smt. Amrika Devi

and Ors. Vs. State of Bihar and Ors., reported in 2019(5) BLJ 410, lays down the procedure for computing the qualifying service by adding the period

of service under the work-charged establishment.

Though no counter affidavit has been filed on behalf of the State but learned counsel appearing for the State submits that in view of the ratio laid down

in the case of Mobina Khatoon (supra), the case of the petitioner may be considered.

Considering the rival submissions of the parties, the only issue involved in the present case is whether the petitioner, after rendering service, under

work-charged establishment for 29 years, is entitled for pension or not.

In the case of Mobina Khatoon (supra), the matter was referred to a larger Bench where the Division Bench of this Court noticed the difference of

opinion in the two judgements delivered by two different Division Benches of this Court "one being in Saraswati Devi Vs. The State of Bihar and

Ors., reported in 2017(3) PLJR 645 and the other being in the case of The State of Bihar and Ors. Vs. Bimli Devi, reported in 2016(1) PLJR 452. The

issue referred was whether the services rendered by a work-charged employee is to be taken into account for computing his pension and whether a

work-charged employee is, in the first instance, entitled to pensionary and other benefits which are available to a government servant and secondly

whether there is any availability of family pension to the widow of such deceased work-charged employee or compassionate appointment to his heirs

in case of death of such employee in service tenure. The reference has been answered in paragraph 70 of the judgement, which reads as follows:

"70. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that till the time, appropriate rules in this regard

is framed by the Government:-

(i) That a work-charged employee who has completed ten (10) or more years of continuous service against one post in the work-charged

establishment will be paid pension and his family, in case of death of such work-charged employee, would be paid the family pension.

(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their

heirs and dependants would be entitled to claim death-cum-retiral benefits.

(iii) However, the dependants of a work-charged employee would not be entitled to claim appointment on compassionate ground in the absence of any

scheme framed by the Government for such work-charged establishment.â€

The case of Smt. Amrika Devi (supra) the matter was referred to the larger bench for authoritative pronouncement in view of the difference of

opinion noted by a learned Single Judge of this Court in the two Division Bench judgements, namely, Civil Review No. 210 of 2014, arising out of LPA

No. 416 of 2013 dated 21.9.2015 (State of Bihar & Ors. Vs. Sheela Devi and other analogous cases) as well as in LPA No. 12674 of 2017 dated

4.1.2018 (Binod Kumar & Ors. Vs. State of Bihar & Ors.). In the case of Sheela Devi (supra), the Division Bench has directed for taking into

account of the entire period of work-charged tenure for being counted for pensionary benefits whereas in the case of Binod Kumar (supra) the

Division Bench, taking into account the Work-charged Establishment Revised Service Condition (Repeal) Rules, 2013, directed for counting the

services rendered under work-charged establishment only to the extent of the shortfall in the qualifying period of service for grant of pension which

shall be made up by adding that period spent under the work-charged establishment. The answer to the reference has been recorded in paragraph 46

of the judgement, which reads as follows:

â€œ46. The reference, thus, is answered in the following terms:

(a) With respect to addition of the number of years of service rendered in a work-charged tenure to the service under regular establishment, for the

purposes of making the service of such regular employees pensionable, there is practically no substantial difference in the pronouncements of the two

Division Benches in the case of Sheela Devi (supra) and Binod Kumar (supra).

(b) For the purposes of pension, only such period from the work-charged tenure would be added for making the service of an employee which has

been regularized to qualify him for pension.

(c) While adding such period of work-charged tenure, the modus would be of granting/counting one year for every five years of service rendered

under work-charged establishment. If that also leaves some shortfall, then further number of years of work-charged tenure can be taken/added for

making the service of the employee pensionable.

(d) For the purposes of giving benefit to an employee for promotion on the selection grade and timebound-promotion, the entire period of service rendered as work-charged employee can be counted.

(e) The Rules and Circular of 2013 are valid as has been held in Binod Kumar (supra).

(f) The Rules and Circular of 2013 are applicable to such work-charged employees who have been appointed after 22.10.1984 and prior to 11.12.1990.â€

In view of the discussions made above, this Court finds that the facts of the present case comes within the four corners of the ratio laid down in the

case of Mobina Khatoon and Smt. Amrika Devi (supra) and as such the petitioner is thus entitled to pension. The petitioner having completed 29 years

of service, becomes entitled to the payment of pension, by virtue of application of the ratio laid down in the two Full Bench judgements. In case, the

case of the petitioner is still pending for consideration, the same shall be decided, in view of the ratio of the two Full Bench judgements referred above,

within a period of three months from the date of receipt/production of a copy of this order.

The writ application thus stands allowed.