

## Harideo Jha Vs State Of Bihar

**Court:** Patna High Court

**Date of Decision:** Feb. 15, 2024

**Acts Referred:** Bihar Pension Rules, 1950 " Rule 59

**Hon'ble Judges:** Nani Tagia, J

**Bench:** Single Bench

**Advocate:** Rajendra Narain, Dharmendra Kumar Sinha, Ritesh Kumar

**Final Decision:** Disposed Of

### Judgement

1. Heard Mr. Rajendra Narain, learned senior counsel appearing for the petitioner and Mr. Ritesh Kumar, learned SC 33 for the State.

2. The petitioner who was appointed as a Cook on daily wage basis on 26.01.1970 and whose services as such was regularized on 28.04.2005 in the

Department of Social Welfare Department, Government of Bihar by an order issued by the Director, Department of Social Welfare Department,

Government of Bihar vide memo No. 407 dated 28.04.2005 (Annexure-3 to the writ petition) and retired from the service on 31.01.2012 from the post

of Cook, has approached this Court by filing this writ petition praying for payment of pension, gratuity and other retiral benefits to the petitioner by

adding shortfall of 3 years 2 months and 27 days from his service rendered on daily wage in completing 10 years of qualifying service for pension and

other retirement benefit as provided in the Bihar Pension Rules, 1950.

3. In support of the petitioner's case that he is entitled to payment of pension and other retirement benefits even though he had not completed 10 years

of regular service as Cook from the formal date of regularization, learned senior counsel appearing for the petitioner has placed reliance on Rule 59 of

the Bihar Pension Rules, 1950 as well as Memo No. Pen1024/69/11779 F., dated 12.08.1969 issued by the Finance Department, Government of Bihar

to contend 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 Rule, 1950.

4. The petitioner has also placed reliance on a decision rendered by a Division Bench of this Court in LP.A. No. 198 of 2016 wherein while

interpreting the above provision of Rule 59 of the Bihar Pension Rule, 1950 as well as Memo No. Pen1024/69/11779 F., dated 12.08.1969 this Court

has held that “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”.

5. Counter affidavit by the State has been filed wherein it has not been disputed that the petitioner has rendered his service as a Cook continuously

since his date of initial appointment on 26.01.1970 till he was regularized as a Cook vide memo No. 407 dated 28.04.2005 (Annexure-3 to the writ

petition).

6. Learned counsel for the State while not disputing the contentions advanced by the learned senior counsel appearing for the petitioner has also

submitted that continuous service rendered for more than 15 years, may it be in temporary capacity, is liable to be considered as pensionable service.

7. That apart, learned counsel appearing for the State further submits that the Government of Bihar has also come out with a resolution wherein it has

been provided that 5 years of services rendered as daily wage shall be counted as one year of service for the purpose of pensionary and other

retirement benefits. He further submits that in the facts of this case, the petitioner would be entitled to pension and other retirement benefits even in

terms of the resolution of the government, in addition to the contentions advanced by the petitioner.

8. Since the entitlement of pension and other retirement benefits of the petitioner in the facts and circumstances of the case has remained undisputed,

in view of the provisions of Rule 59 of the Bihar Pension Rules 1950 as well as Memo No. Pen1024/69/11779 F., dated 12.08.1969 and in the light of

the decision rendered by the Division Bench of this Court in LPA No. 198 of 2016 vide order dated 26.06.2023, this writ petition is disposed of with a

direction to the respondent authorities to consider the case of the petitioner for payment of pension as well as other retirement benefits in the light of

Rule 59 of the Bihar Pension Rules, 1950 and Memo No. Pen1024/69/11779 F., dated 12.08.1969 issued by the Finance Department, Government of

Bihar as well as decision rendered by the Division Bench of this Court in LPA No. 198 of 2016 and the resolution of the government mentioned herein

above as pointed by the learned government Advocate.

9. Since the petitioner has retired from service in the year 2012, the respondent authorities shall complete the exercise directed herein above as

expeditiously as possible preferably within a period of six weeks from the date of receipt of a certified copy of this order.

10. Writ petition is disposed of with the above direction.