

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15504 of 2018

=====

Ram Pravesh Sharma S/o Late Ramkrit Singh, resident of Village - Avaran
Chak, P.O. - Amarpura Lakh, P.S. Naubatpur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Bihar, Patna.
2. The Engineer in Chief, Public Health Engineering Department, Bihar, Patna.
3. The Superintendent Engineer, Patna Circle, Public Health Engineering Department, Patna.
4. The Executive Engineer, West Patna Division, Public Health Engineering Department, Patna.
5. The District Account Officer, Patna.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Advocate.
For the Respondent/s : Mr. Arvind Ujjwal, SC-4.

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V JUDGMENT

Date : 24-03-2021

The Petitioner, along with others, was appointed as Khalasi in the Public Health Engineering Department (PHED), Bhagalpur Division, on 29.07.1980 in a work charge establishment vide order at Annexure-1. In the Year 1989 the petitioner was transferred in the same capacity from Bhagalpur to Patna and was posted at Masaurhi. On 01.06.2002, the petitioner was reverted as daily wager along with others. On 28.11.2006, 2277 posts of technical workers such as Khalasi, Keyman cum Chaukidar, Pump operator and Electrician was sanctioned in the Public Health Engineering Department and



services of the work charge employees including those reverted to daily wager was regularized and adjusted against sanctioned post with all consequential benefits. On 04.02.2015, respondent no.4 issued an order whereby the benefits of 6th pay revision was given to the petitioner with effect from 01.04.2007 and not with effect from 01.04.2006 as claimed. The petitioner superannuated on 31.01.2017.

2. Thereafter, petitioner submitted a representation on 01.09.2017 to the Executive Engineer, PHED for fixation of his pension, salary and to provide all retiral benefits after calculating services from 30.07.1980 in place of 29.11.2006 i.e. the date of adjustment and regularization on the sanctioned post. The respondents did not pass any order on the said representation.

3. Hence this writ application under Article 226 of the Constitution of India praying therein to quash the order No.87 dated 04.02.2015 passed by respondent no.4 (at Annexure-3) and to direct the respondents to allow the benefit of pay revision from 01.04.2006 and not from 01.04.2007 as ordered. The petitioner has further prayed for direction to the respondents to fix pay and pension since 30.07.1980 i.e. soon after joining on the post of khalasi in the work charge



establishment and not as done from 29.11.2006 i.e. the date of regularization and adjustment against the sanctioned post.

4. Learned counsel for the petitioner submits that the government took a resolution and issued order dated 01.06.2002 that those worker in the work charge department who were appointed after 1985 would be reverted back to the status of daily wagers. Though the petitioner was appointed before 1985 but was reverted back. Moreover other twenty one who were appointed along with the petitioner were not reverted back. The action of the respondent was violative of right of equality of the petitioner.

5. Learned counsel for the respondents contends that vide Resolution No. 10710 dated 17.10.2013 of the Finance Department, Government of Bihar, it was resolved that the period between 2002 to 2006 when the services of the respective employees of work charge establishment were reverted to a daily wage employee, would be treated as work charge period and the employees would be granted the benefits of ACP/MACP for the period spent in work charge establishment. Therefore, the petitioner resumed his status of a work charge employee from 29.07.1980 to the date of his regularization on 29.11.2006. Moreover the petitioner had not challenged the resolution dated



01.06.2002 at any point of time. Now the challenge is meaningless as grievance of the petitioner to that extent has already been taken care of.

6. Learned counsel for the respondents contends that this case is fully covered by the Full Bench Judgment of this Court in **Smt. Amrika Devi and Others v. The State of Bihar and Others** reported in **2019 (4) PLJR 354**, wherein a Full Bench categorically answered the reference that for the purposes of pension only, such period from the work charge tenure would be added for making the service of an employee, which has been regularized, to qualify him for pension. While adding such period of work charge tenure, the modus would be of granting / counting one year for every five years of service rendered under work charge establishment. If that also leaves some shortfall, then further number of years of work charge tenure can be taken / added for making the service of the employee pensionable. The Full Bench further held that for the purposes of giving benefit to an employee for promotion on the selection grade and time bound promotion, the entire period of service rendered as work charge employee can be counted.

7. In the supplementary counter affidavit, the respondents have stated that vide Memo No. 707 dated



22.05.2018, the Secretary, PHED has ordered for grant of benefit of ACP/MACP to the employees who were engaged as a work charge employee and whose services have been regularized in the year 2006, under the policy decision of the Government contained in Memo No. 639 dated 16.03.2006 issued by the General Administration Department. Accordingly, the respondents have extended the benefit of first and second ACP to the petitioner and after extending the benefit, pay of the petitioner was fixed. Vide Order No. 141 contained in Memo No. 1735 dated 10.07.2019, the benefit of 3rd ACP has been extended in favour of the petitioner also with effect from 30.07.2010. The difference of salary has already been paid to the petitioner.

8. Since Order No. 87 dated 04.02.2015 at Anneuxre-3 is in consonance with the Resolution No. 10710 dated 17.10.2013 of the Finance Department, Government of Bihar which has been upheld valid by a Division Bench of this Court and thereafter by a Full Bench in Amrika Devi case, hence the same requires no interference. Accordingly, Relief No.1 cannot be granted.

9. Rules 58 and 59 of Bihar Pension Rules provides for qualification to get the pension which reads as follows:



“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.

59. The Provisional Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled.

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.”

10. Evidently the petitioner was not qualified for pension from any date prior to his regularization against a substantive and permanent post on 28.11.2006. Thus it is evident that the benefit of pension can be claimed by the government servant only when his service was under the government on a substantive and permanent post besides other qualification of length of service. Therefore, the petitioner



cannot be allowed pay revision from 01.04.2006 as the petitioner was not on substantive post on that day. The benefit of ACP has already been given to the petitioner counting the period of his service rendered as work charge department from 30.07.1980.

11. Likewise considering the aforesaid provisions of the Pension Rules, no direction can be issued to the respondents to fix the pay and pension of the petitioner with effect from 30.07.1980, as the petitioner was not on any substantive and permanent post of the government before 28.11.2006. For the purpose of deciding qualifying period of service for pension, respondent authorities have already taken note of that consistent with Judgment in Amrika Devi case as stated in the counter affidavit.

12. Since the grievance of the petitioner has already been redressed according to law, this writ application stands disposed of without any further order.

(Birendra Kumar, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	18.03.2021
Uploading Date	24.03.2021
Transmission Date	N.A.

