

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15118 of 2014

Shiv Narayan Pandit son of Late Siyaram Pandit, resident of village-
Sakarpura, P.S.- Khagaria, District- Khagaria

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna
2. Joint Secretary, Department of Health, Govt. of Bihar, Patna
3. Director, Indigenous Medicine, Department of Health, Government of Bihar, Patna
4. District Indigenous Medical Officer, Khagaria

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Advocate
For the Respondent/s : Mr. Ajay, GA-12

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-08-2024

Heard Mr. Shiv Kumar, learned counsel appearing on behalf of the petitioner and Mr. Ajay, learned GA-12 appearing on behalf of the State.

2. Learned counsel appearing on behalf of the petitioner informs that the petitioner has already filed a detailed representation for considering his case in light of the several orders passed by this Court, including CWJC No.5045 of 1991 vide order dated 28.07.2008 (Annexure-14), by which this Court had directed for considering the service counted from the date of take over of the hospital, making it clear that the petitioner of the said case would not be entitled to receive salary from the



date of taking over till the date of notification of regularisation. However, the period should be counted as period in service for the purpose of granting other benefits such as pension, promotion etc. It has been informed by the learned counsel that the petitioner was superannuated in the year 2015 itself and considering that he has rendered his service for more than 10 years, as a regular employee, he has to qualified for pension and the same has to be fixed by the State Government, as per the Rule 58 and Rule 59 of the Bihar Pension Rules, 1950, which deals with the condition of service of a Government servant to qualify for pension, may be referred too and the same is reproduced hereinafter:

“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 Provincial 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.”

3. 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.]”*

4. Reading the above provision clearly provides that even a person has worked in temporary capacity has not been confirmed, if the service or any post is continuous and is for more than 15 years, then it may be considered as reasonable



under the Rule 59 of the Bihar Pension Rules, 1950.

5. Having considered the limited relief sought for by the petitioner and taking into consideration that the petitioner has already filed a detailed representation dated 15.07.2014 before the Director, AYUSH, or in alternative, petitioner, if so advised, may also file a detailed comprehensive representation for consideration of his case, in light of the several orders passed by this Court, as well as, as per the paragraph no.4 C (1) of the Bihar Litigation Policy, 2011. The Authorities must take action on the representation of the petitioner expeditiously, within a reasonable period without any further delay. In case, the petitioner finds that the case of the petitioner is not being considered, the petitioner is at liberty to take action against the concerned authority, on whose account, the matter has been delayed.

6. With the aforesaid observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.08.2024
Transmission Date	NA

