

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3074 of 2019**

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1. Rambriksh Paswan, Son of Late Arun Paswan, Resident of Village -Manorampur, P.S.- Asthawa, District- Nalanda, Working Under Executive Engineer, P.H.E.D., Sheikhpura Division.
2. Md. Muslim, son of Late Md. Elahi Bax, resident of Village- Masourhi, P.S.- Jamui, District- Jamui, Working on the post of Tube-well Mistri Under Executive Engineer, P.H.E.D., Sheikhpura Division.
3. Kameshwar Pawwan, Son of Late Degam Paswan, resident of Village- Rampur Sindai, P.S.- Barbiga, District- Sheikhpura, Working on the post of Tube-well Mistri, P.H.E.D., Sheikhpura Division

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Public Health Engineering Department, Govt. of Bihar. Patna.
2. The, Principal Secretary, Finance Department, Govt. of Bihar, Patna
3. The Additional Secretary, Finance Department, Govt of Bihar, Patna
4. The Deputy Secretary, Public Health Engineering Department, Govt. of Bihar Patna
5. The Engineer-in-Chief, Public Health Engineering Department, Govt. of Bihar, Patna
6. The Superintending Engineer, P.H.E.D., Circle, Begusarai.
7. The Executive Engineer, Public Health Division, Sheikhpura, District Sheikhpura.
8. Accountant General, Bihar Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate Mr. Ram Sevak Choudhary, Advocate
For the Respondent/s	:	Mr. S. Raza Ahmad, AAG- 5 Mr. Vishambhar Prasad, AC to AAG-5
For the Accountant General:		Mr. Dr. Anand Kumar, Advocate Mr. Rajan Prakash, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 19-01-2024**

Heard Mr. Siya Ram Shahi, learned counsel along  
with Mr. Ram Sevak Choudhary, learned counsel appearing on  
behalf of the petitioners and Mr. Vishambhar Prasad, learned AC



to AAG-5, for the State.

2. The petitioners by filing the present writ petition under Article 226 of the Constitution of India seeking quashing of Clause (v) of Para 4 of Memo No. 10710 dated 17.10.2013, issued by the Additional Secretary, Finance Department, Government of Bihar, Patna, as contained in Annexure-8 to the writ petition, whereby it has been resolved that the Old Pension Scheme will be applicable to these employees. The benefits of pension and gratuity shall be calculated by recognizing one year of regular service for five years of Work Charge Establishment. Nonetheless, if the period of employee shall not be completed the qualifying period of 10 years of pensionable service under such circumstance, the benefit of pension will be given by adding the minimum service to that period.

3. The petitioners were initially appointed on Muster roll as Nalkup Khalasi sometime in the year 1979 and 1980 and subsequently by the letters issued by the Executive Engineer, Public Health Rural Water Supply Division and on the recommendation of the Establishment Committee, they were appointed as Work Charge Nalkup Khalasi in the pay scale of Rs. 350 -425. In course of time, the petitioner nos. 1 and 2 were promoted to the post of Nalkup Mistri vide office order no. 44



dated 17.02.1990 and likewise petitioner no.3 was promoted on the post of Nalkup Mistri vide office order no.7 dated 11.01.1993. Further in terms of the Finance Department Resolution No. 660 dated 08.02.1999, the petitioners were put in the pay scale of Rs.2650-4000/-. In the meantime, in the light of the letter dated 26.04.2002, issued by the Chief Engineer (Technical), Government of Bihar, the petitioners and several similarly situated employees, who were working in Work Charge Establishment reverted on the post of muster roll, which order was put to challenge by filing several writ petitions i.e. C.W.J.C. No. 7359 of 2002 and other analogous cases.

4. During the pendency of the aforesaid writ petition, the State Government came out with a policy decision with regard to regularization of the services of the employees working under Work Charge Establishment and finally pursuant to the direction of the Hon'ble Court a Three Men High Committee was constituted for regularization of the services in the light of the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.**, reported in **2006 (4) SCC 1**, and finally the services of the petitioners have been regularized vide Memo No. 1130 dated 28.11.2006. Subsequent thereto the Government of Bihar in the



department of Finance vide Memo No. 10710 dated 17.10.2013 came out with a resolution whereby the cut off date of regularization of Work Charge Establishment, which were earlier fixed vide Resolution No. 6394 dated 23.10.1987 has been amended and simultaneously Clause (v) of paragraph 4 is incorporated with regard to how the period of Work Charge Establishment shall be calculated for fixation of pension etc., which is impugned herein.

5. It is submitted on behalf of the petitioners that the petitioners were duly appointed under Work Charge Establishment way back in the year 1980-1982 and brought into regular establishment on 05.12.2006 after about 23 years of service in the Work Charge Establishment, thus for the purpose of fixation of pension of the petitioners, the entire period of Work Charge Establishment should be counted as per the Finance Department letter dated 31.03.2004. By the impugned Clause (v) of para. 4 of the Finance Department resolution dated 17.10.2013, only five years of Work Charge Establishment shall be calculated as one year, if the total period on the basis of said calculation is less than ten years (qualifying service) than the same will be made pensionable after adding the minimum service period in credit and in this way the period rendered



under Work Charge Establishment has been given a go-bye.

6. Mr. Shahi, learned counsel vehemently submitted that admittedly the petitioners have brought under the Work Charge Establishment way back in the year 1981-82 and thus in the case of the petitioners, the circular/resolution, which was prevalent at that point of time shall be applicable in their cases and the resolution issued by the Finance Department, as contained in Memo No. 10710 dated 17.10.2013, shall have no application.

7. He further submits that though the learned Full Bench of this Court in the case of **Smt. Amrika Devi & Ors Vs. The State of Bihar & Ors** and other analogous case, [2019 (4) PLJR 354] held in clear terms that entire service under Work Charge Establishment could not be counted for the purpose of qualifying service, but it would only be counted to the extent of service for the purpose of making it pensionable. But in paragraph no. 45 of the said judgment, made it clear that the appointees prior to 22.10.1984 would not be affected by the Rules of 2013.

8. Per contra, Mr. Vishambhar Prasad, learned counsel representing the State while refuting the contention of the petitioners, has submitted that services of the petitioners



have been regularized vide Memo No. 1130 dated 28.11.2006 w.e.f. 05.12.2006 and now all the resolutions, which were prevalent at that point of time have been duly merged in the resolution dated 17.10.2013. However, he further clarified that resolution no. 1503 dated 27.03.1987 issued by the Finance Department, Government of Bihar deals with counting of period of Work Charge Establishment for the pensionary benefits of Work Charge Establishment employee and para. (3) thereof clearly stipulates that the whole period spent under Work Charge Establishment shall be counted only for the purpose of qualifying service period for pension. The language of the aforesaid Resolution is clear that there is no ambiguity in the language of aforesaid resolution so that there is no scope of any interpretation of the aforesaid resolution other than the literal rule of interpretation. He further submits that the letter no. 1393 dated 31.03.2004 issued by the Finance Department, on which the reliance is being made, is only reiteration of earlier circular issued by the Finance Department with regard to admissibility of pension and gratuity for the period spent under Work Charge Establishment prior to the regularization. He lastly submits that in similar matter vide order dated 04.01.2018 passed in **C.W.J.C. No. 12674 of 2017 (Binod Kumar and Others Vs.**



**The State of Bihar and Others**), the Hon'ble Division Bench has dismissed the writ petition by which the validity of Clause V of the resolution no. 10710 dated 17.10.2013 has been put to challenge.

9 In sum and substance, he concluded his submission that the period spent under Work Charge Establishment shall only be counted for qualifying period of pension and it will be equally applicable to the employees, either retired prior to the issuance of Resolution no.10710 dated 17.10.2013 or subsequent thereto.

10. This Court has heard the learned counsel for the respective parties and also perused the materials available on record. Having gone through all the relevant circular/ resolution(s), this Court finds that it indubitably it suggests that the period under Work Charge Establishment shall only be counted for qualifying service for pension. It would be apt to quote the relevant portion of Resolution No. 1503 dated 27.03.1987, which reads as follows:

“[वित्त विभाग, संकल्प संख्या 3  
पी0ए0आर0 01/86 खण्ड 1503 वि0, दिनांक 27.03.  
1987 की प्रतिलिपि।]

विषय : कार्यभारित कर्मचारियों को  
'पेंशन' प्रवर कोटि एवं कालबद्ध प्रोन्नति की सुविधा  
देने के लिए कार्यभारित स्थापना में बितायी गयी



अवधि को क्वालिफाईंग पीरियड की गणना के संबंध में।

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3. कार्यभारित कर्मचारियों को पेंशन, प्रवर कोटि एवं कालबद्ध प्रोन्नति की सुविधा देने के लिए कार्यभारित स्थापना में बितायी गयी अवधि को क्वालिफाईंग पीरियड की गणना का विषय सरकार के विचाराधीन था। अतः पूर्ण विचारोपरान्त पूर्व में लिए गए निर्णय को संशोधित करते हुए राज्य सरकार ने निम्नलिखित निर्णय लिया है –

(ए) ऐसे कार्यभारित कर्मचारी जिनको वर्तमान अनुदेशों के अधीन पेंशन एवं उपदान अनुमान्य होता है उनके द्वारा कार्यभारित स्थापना में बितायी गई पूरी सेवावधि को शामिल करते हुए पेंशन एवं उपदान के लिए क्वालिफाईंग पीरियड की गणना की जायेगी, बशर्ते ऐसा करते समय कार्यभारित सेवा से जितनी अवधि पेंशन योग्य सेवाएँ जोड़ी जाएँगी उतनी अवधि में अंशदायी भविष्य निधि में प्रदत्त सरकारी अंशदान अगर कोई हो, की राशि सरकार को लौटा देनी होगी तथा राज्य कोष में जमा कर देनी होगी।

(बी) नियमित स्थापना में आने के पश्चात् कार्यभारित सेवा वृद्धि को जोड़ते हुए सम्बन्धित कर्मचारियों को प्रवर कोटि एवं कालबद्ध प्रोन्नति की सुविधा उपलब्ध करायी जाये, बशर्ते कि उससे किसी भी नियमित कर्मचारी की वरीयता का अवक्रमण नहीं होता हो। वरीय प्रवर कोटि या कालबद्ध प्रोन्नति के सम्बन्ध में इस आदेश के निर्गत होने की तिथि के पूर्व का कोई भी बकाया अनुमान्य नहीं होगा। इस प्रसंग में पूर्व में निर्गत सभी आदेश एवं अनुदेश इस अंश तक संशोधित समझे जायेंगे।

4. इस आदेश का प्रभाव आदेश



निर्गत होने की तिथि से होगा।”

11. Furthermore, the letter no. 1393 dated 31.03.2004 is also reiteration of the earlier resolution. So far the issue involved in the present writ petition, as also the validity of Clause V of paragraph 4 of Resolution no.10710 dated 17.10.2013 are concerned, has already been set at rest by the learned Full Bench of this Court in the case of **Smt. Amrika Devi & Ors. Vs. The State of Bihar & Ors.**, and other analogous cases reported in **2019 (4) PLJR 354**, wherein the Full Bench of this Court taking note of all the resolutions/circulars, have been pleased to hold in clear terms that:

“it would be in our opinion wrong to read that by virtue of 1987 Circular, the entire service period rendered in the Work Charge Establishment is to be counted for pension. It has been made clear that the Finance Department, Government of Bihar vide letter no. 1393 dated 31.03.2004 reiterated the contents of Circular 1987, referred to above, though by using different terminology, however the use of the word “Ahrak Awadhi” clearly refers to qualifying period and nothing more.”

12. Taking note of the various judgments, including the judgment rendered by the Division bench in the case of **Binod Kumar & Ors** (supra) it has been held that the addition



of the period rendered under the work-charged establishment was all through held to be for the purposes of making the service of the petitioner pensionable; meaning thereby that only such period was to be added which made the petitioner qualify for being paid pension. In paragraph 40 of the aforementioned judgment, the learned Full Bench of this Court has also observed that:

“we also do not find any anomaly in the Rules and Circulars of 2013 providing for a special mode of counting of the period for making up the deficit for the period to qualify for pension, as such Clause in the Rules and Circular are broad enough to pitch in as many number of years from the work-charged tenure for the purposes of addition for making the service pensionable, as required. This is only, we repeat, a beneficent measure which has been promulgated and which ought to be appreciated.”

13. Before parting with the final conclusion, this Court further observed that the submissions of the petitioners that the circulars/resolution of 2013 are applicable to only such work-charged employees, who have been appointed after 22.10.1984 and prior to 11.12.1990, as has been held by the learned Full Bench and thus in their cases the earlier circular/resolution would be applicable, is wholly misconceived,



as at no point of time the Government came up with any circular indicating that the entire period of work-charged establishment would be calculated for calculating service period of such employee, who have been inducted in regular service for the purposes of making the service pensionable and in fact in the case in hand, the services rendered under work-charged establishment can only be counted for the purposes of qualifying period of service. Needless to observe that the petitioner no.3 retired on 31.10.2018 whereas petitioner nos. 1 and 2 superannuated on 31.01.2019 and 31.09.2020 respectively and by this way they have already completed qualifying period of service for pension.

14. It is further observe that the respondents have categorically averred in their counter affidavit that the work-charged employee, who have been reverted in the year 2002 in the daily wager and whose services have been regularized in the year 2006 have been extended the benefit of ACP/MACP, Pay protection/ continuity of service vide Memo No. 707 dated 22.05.2018 issued under the signature of Secretary, Public Health Engineering Department and further the pension and gratuity shall be paid according to resolution no. 10710 dated 17.10.2013 of the Finance Department, Government of Bihar.



15. In view of the discussions made hereinabove,  
the present writ petition sans any merit. Accordingly, it is  
dismissed.

**(Harish Kumar, J)**

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2024
Transmission Date	NA

