

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.91 of 2022

In
Civil Writ Jurisdiction Case No.1046 of 2021

- 1(a) Jaitun Nesha, Widow of Late Mohammadin Ansari @ Muhmmddin Ansari, Resident of Village - Mukundpur, P.S. - Taraiya Sujana, District- Kushi Nagar at present residing in the house of Md. Alique Ahmad at Maula Nagar, P.S. - Belsand, District- Sitamarhi.
- 1(b) Afjal Ansari, Son of late Mohammadin Ansari @ Muhmmddin Ansari, Resident of Village - Mukundpur, P.S. - Taraiya Sujana, District- Kushi Nagar at present residing in the house of Md. Alique Ahmad at Maula Nagar, P.S. - Belsand, District- Sitamarhi.
- 1(c) Kutubuddin Ansari, Son of Late Mohammadin Ansari @ Mohmmddin Ansari, Resident of Village - Mukundpur, P.S. - Taraiya Sujana, District- Kushi Nagar at present residing in the house of Md. Alique Ahmad at Maula Nagar, P.S. - Belsand, District- Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Department, Government of Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Chief Engineer, R.E.O- II, Road Construction (work) Department, Government of Bihar, Patna.
4. The Superintending Engineer, Rural Works Circle, Muzaffarpur, District - Muzaffarpur.
5. The Executive Engineer, Rural Works Department, Works Division, Sheohar, District - Sheohar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Durga Nand Jha, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, AAG 5

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 18-08-2025

The present intra court appeal has been filed against
the judgment dated 17.01.2022, passed by the learned Single



Judge of this Court in CWJC No. 1046 of 2021, whereby the writ petition was disposed of with a liberty to the appellant/petitioner to file a representation before the concerned authority.

2. As per the facts on record, the Appellant, retired from the post of Road Mate-cum-Chowkidar under the Works Division, Sheohar. He initially joined as a daily wager in the year 1981, removed on retrenchment, but he was re-engaged in December 1984, and thereafter continuously worked from March, 1985. Despite repeated representations, his services were never regularised, although similarly placed employees were regularised in the year 1986. He continued to render his services, but no order of regularisation issued in his favour. The appellant/petitioner moved to this Hon'ble Court in CWJC No. 4103/1993, wherein he was held entitled to minimum pay scale benefits. Subsequently, the Establishment Committee decided to regularise him in the year 1996, but his absorption was made only in work-charge establishment and it was cancelled in the year 2000, reverting him as a daily wager. This led to another round of litigation by the appellant in CWJC No. 3211/2004 which was allowed vide order dated 25.05.2006. The State assailed the order of the writ court to the Hon'ble Supreme



Court, and the appeal was dismissed. The appellant, however, continued only as work-charge staff till the date of his retirement.

3. The appellant again filed a writ petition vide CWJC No. 7777/2013, whereby the Hon'ble Court issued a direction to consider the case of his regularisation. The departmental authorities, however, rejected his claim vide memo dated 28.02.2017, which was later contested in a contempt proceeding and a liberty was given by the Hon'ble Court to seek further relief. The appellant retired on 31.12.2013, and no retirement benefits have been granted to the Appellant.

4. The writ-petitioner, Mohammadin Ansari @ Muhammdin Ansari had preferred the writ petition (CWJC No. 1046 of 2021) for the following reliefs:-

“(i) For issuance of a writ in the nature of mandamus directing and commanding the respondent to treat the services of the petitioner as a regular employee under the State Government in the light of judgment of this Hon'ble Court passed in the case of Pawan Kumar Srivastava and others as reported in 2011(2) B.L.J. 345 as also the Full Bench Judgment of the Hon'ble Jharkhand Court passed in the case of Ram Prasad Singh as reported in 2005 JLJR 38 and thereby to pay



the retiral benefits including pension, gratuity, leave encashment and A.C.P. upon granting him the benefit of regularisation after completion of 10 years' service under work charge establishment in the department.

(ii) For issuance of further writ in the nature of certiorari for quashing the order contained in Memo No. 96 dated 28.02.2017 issued under the signature of Superintending Engineer, Respondent No. 4, whereby and whereunder in compliance to the order of this Hon'ble Court dated 10.08.2016 passed in CWJC No. 7777 of 2013. The claim of the petitioner has been rejected in a mechanical and arbitrary manner ignoring the laws laid down into the case of Pawan Kumar Srivastava reported in 2011 (2) BLJ 345 as also Full Bench Judgment reported in 2005 JLJR 38 upheld by Hon'ble Supreme Court, copy if order dated 03.05.2007 passed in CWJC 16060/2004 and legal claim of the petitioner for regularization has been turned down.

(iii) For issuance of an appropriate declaration and holding that once admittedly the petitioner worked for more than 17 years in work charge in regular pay scale with all revision of pay and his work was perennial in nature, his service was fit to be taken into regular establishment as provided under P.W.D. code which has a force



of law and accordingly he is fully entitled to entire retiral benefits including Pension, Gratuity, Leave Encashment, A.C.P. and other admissible benefits which have not been paid although petitioner has retired on 31.12.2013 and now the said retiral benefits are required to be paid to the petitioner forthwith.

(iv) Issuance of a further writ in the nature of Mandamus directing and commanding the respondents to make payment of post-retirement dues including Pension, Gratuity, Leave Encashment in lieu of unutilised leave, A.C.P. and other Post retiral benefits forth with along with interest @ 18% per annum and penal interest even in the light of decision of Full Bench of this Hon'ble Court in the case of Mobina Khatoon vs. The State of Bihar and others as reported in 2019(2) BLJ 9.

(v) Any other relief or reliefs be granted to petitioner to which he is found to be entitled to.”

5. The learned Single Judge, after going through the rival contention of parties and the documents available on record, disposed of the writ petition with the following observations:-

“Petitioner has not established legal or vested statutory right followed by demand before the



competent authority. In the light of Hon'ble Apex Court decision in the case of Mani Subrat Jain vs. State of Haryana reported in (1977) 1 SCC 486 the petitioner is not entitled to relief sought in the present petition in the absence of established legal/statutory right followed by demand before the competent authority."

6. The learned Single Judge had, however, granted liberty to the writ-petitioner to make representation before the competent authority with a direction to decide the representation within a period of three months.

7. A work-charge employee is someone who is appointed on a temporary basis. The Apex Court in ***Jaswant Singh v. Union of India; 1979 4 SCC 440***, has observed that the work-charge employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. Thus, they are temporary employees, and have no legal right.

8. The Apex Court in ***Mani Subrat Jain v. State of Haryana; (1977) 1 SCC 486*** held that a person cannot approach the court without an established legal right. The learned Single Judge, while passing the impugned judgment, has relied upon the said decision of the Apex Court. Such right is not established by the appellants in the present case before the concerned



authorities, as observed by the learned Single Judge.

9. During the pendency of the present appeal, the writ-petitioner died on 07.02.2025 and subsequently, a substitution application was filed vide I.A. No. 01 of 2025. The said substitution application was allowed vide order dated 05.05.2025, whereby the original appellant Mohammadin Ansari @ Muhmmddin Ansari was substituted by his legal heirs/representatives namely, Jaitun Nesha (Wife), and Afjal Ansari & Kutubuddin Ansari (Sons).

10. Learned counsel appearing for the appellants has submitted that the substituted appellants have confined their prayer to the extent of payment of family pension only. Learned counsel submits that the deceased-appellant is fully entitled to retiral benefits even if his service is treated as work charge employee, as has been held in the Full Bench decision of this Court in the case of *Mobina Khatoon & Ors. Vs. The State of Bihar & Ors.* reported in *2019 (1) PLJR 1015*. However, the appellants in the present case have not established their legal or vested statutory right before the concerned authority, and as such no relief can be given to them.

11. Considering the facts and circumstances of the case and the arguments advanced on behalf of the parties, we do



not find any perversity in the order of the learned Single Judge. Accordingly, we are not inclined to interfere with the order under appeal. However, the substituted appellants will be at liberty to file representation before the Competent Authority who shall consider the entitlement of family pension of the deceased Mohammadin Ansari @ Muhmmddin Ansari and pass an appropriate order within a period of six weeks from the date of filing of any such representation.

12. With the aforesaid observation(s)/direction(s), the present L.P.A. stands disposed of.

13. Interlocutory application, if any, shall stand disposed of.

(Sudhir Singh, J)

(Alok Kumar Pandey, J)

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