

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S). No. 37 of 2022

Nagendra Kumar Petitioner
Versus

1. The State of Jharkhand.
2. The Principal Secretary, Rural Development Department, Govt. of Jharkhand, Ranchi.
3. The Chief Engineer, Rural Engineering Organization, Govt. of Jharkhand, Ranchi.
4. The Superintending Engineer, Rural Engineering Organization, Works Circle Chaibasa, West Singhbhum.
5. The Executive Engineer, Rural Engineering Organization, Works Circle Chaibasa, West Singhbhum.
6. The Executive Engineer, Rural Engineering Organization, Works Division, Saraikella-Kharsawan
7. The Principal Accountant General, Jharkhand, Ranchi.

..... Respondents.

CORAM: HON'BLE DR. JUSTICE S.N.PATHAK

For the Petitioner : Mr. D.K. Chakraverty, Advocate
For the Respondents : Mr. Priyadarshi, GP-VI
Ms. Shruti Shresth, Advocate

15/02.07.2024 Heard the parties.

2. At the very outset, petitioner confines his prayer for granting the pensionary benefits from the date of initial appointment i.e. 01.10.1981 and not from the date of regularization i.e. 18.10.2021.

Further prayer has been made to release all the retiral benefits of the petitioner and fix the pension since petitioner has already superannuated from the service on 31.12.2022.

3. Shorn of unnecessary details, the petitioner was initially engaged on daily wages basis in the respondent-Department on 01.10.1981 at Rural Engineering Organization, Works Sub-Division, Chaibasa as 'Roller Driver' and since then he has continuously worked and performed his duty. Thereafter, by Office Order dated 19.10.1981, the petitioner was engaged as Jeep Driver on daily wages basis. Again on 26.05.1995, the petitioner was

further appointed as Roller Driver and since then he was working as Roller Driver. It is the further case of petitioner that he was appointed on sanctioned and vacant post in a permanent Establishment. Though petitioner had worked continuously for 40 long years but the respondents had not regularized his services. Aggrieved thereto, the petitioner filed W.P.(S). No. 66 of 2020, in which vide order dated 09.11.2020, this Court directed the concerned respondents to regularize the services of the petitioner. When the order of the Court was not complied with, petitioner preferred Contempt, however, later on the same was dropped as the respondents had regularized the services of petitioner w.e.f. 18.10.2021 as Roller Driver. Thereafter, petitioner joined the services with objection that his service be regularized from the date of his initial appointment and not from 18.10.2021.

4. It is the further case of the petitioner that the respondent-authorities rectified the order dated 18.10.2021 and instead of Roller Driver under Work Charge Employee, services were regularized as Roller Driver under Daily Wages Employee on 30.10.2021. The petitioner was compelled to opt for New Pension Scheme though he was entitled for Old Pension Scheme as he was working since 1981. Thereafter, the petitioner filed several representations for granting the benefits of Old Pension Scheme and during the pendency of the instant writ petition, petitioner retired from service w.e.f. 31.12.2022 vide letter dated 27.12.2022. However, when no heed was paid to the grievances of the petitioner, he was compelled to knock the door of this Court.

5. Learned counsel for the petitioner vociferously argues that petitioner had worked for more than 40 years in the permanent Establishment of the respondent-Department on Muster Roll as daily wage employee and he is entitled for regularization since 01.10.1981. It has been further argued that though services of the petitioner was regularized from 18.10.2021 but the same ought to have been considered from 01.10.1987 for granting the pensionary benefits. Placing heavy reliance on the judgment of Hon'ble Apex Court in case of **the State of Gujarat & Ors. Vs. Talisibhai**

Dhanjibhai Patel [Special Leave to Appeal (C) No. 1109 of 2022] and submits that in view of observations of the Hon'ble Court petitioner is entitled for pensionary benefits from the date of initial appointment and not from the date of regularization. It has been fairly submitted that petitioner is not claiming salary from the date of initial appointment since he was regularized on 18.10.2021 but he should be considered for pensionary benefits from the date of initial appointment as he has rendered 40 years of unblemished service career in permanent Establishment of the respondent-department on Muster Roll.

6. Learned counsel appearing for the respondent-State opposes the contention of learned counsel for the petitioner and emphatically argues that as the services of the petitioner was regularized from 18.10.2021, he is not entitled for pensionary benefits from the initial date of appointment. Learned counsel submits that petitioner was a daily wager and was not working on sanctioned and vacant post therefore his past services cannot be considered even for pensionary benefits. Justifying the impugned order it has been argued that there is no illegality or infirmity in the order passed by the respondents.

7. Having heard the rival submissions of the parties across the bar, this Court is of the considered view that petitioner is entitled for pensionary benefits from the date of initial appointment, save and except the back-wages/ salary for the period he worked prior to regularization i.e. from the date of initial appointment. It is settled preposition of law that since State was in need of services of petitioner and he was allowed to continue to work for 40 long years, the State cannot be permitted to take benefits of its own wrong. Taking services of the petitioner for 40 years and thereafter, to contend that he is not entitled for pensionary benefits from the date of regularization is unreasonable.

8. The issues to be decided for proper adjudication of the case are as follows:

- I) Whether petitioner is entitled for counting his past services as daily wager for the purpose of pensionary benefits?
 - II) In absence of material on record to show as to why employee had not been made permanent despite rendering such a long period of service, whether direction can be issued to count the past services rendered by him as daily wager for calculating his pension?
9. Similar issue fell for consideration before the Hon'ble Apex Court in case of **Yashwant Hari Katakkar Vs. Union of India & Ors.**, reported in **(1996) 7 SCC 113**, wherein their Lordships have held as under:

“3..... There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 ½ years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits.”

Further, in case of **Uday Pratap Thakur & Anr. Vs. State of Bihar & Ors.**, reported in **2023 SCC Online SC 527**, Hon'ble Apex Court has reiterated the same holding therein that, *“..... the services rendered as work charged after their services have been regularized under the regularization scheme, namely, the Rules, 2013 and Circular shall be counted for the purpose of qualifying service for pension only as per Rule 5(v) of the Rules, 2013”*.

In case of **the State of Gujarat & Ors. Vs. Talisibhai Dhanjibhai Patel [Special Leave to Appeal (C) No. 1109 of 2022]**, the Hon'ble Apex Court has held as under:

“..... To take the services continuously for 30 years and thereafter to contend that an employee who has rendered 30

years continuous service shall not be eligible for pension is nothing but unreasonable.”

10. It is the clear cut case of the respondent-State that the Government has fixed a minimum 10 years of service as a regular employee to qualify for pension. In this context, Rule 58 of the Bihar / Jharkhand Pension Rules which deals with the conditions of the service of a Government servant to qualify for pension may be referred to and the same is quoted herein below:-

*“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:-

xx xxx xxx xxx.”

11. Rule 59 of the said Pension Rules 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. Pen. 1024/69/11779 F. dated 12.8.1969, which is quoted herein below:-

“Regarding:- Declaration of temporary service of a Government servant who is not confirmed as pensionable.

1. 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 considerations 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.”

12. From plain reading of the above provisions, it is crystal clear that even if a person has worked in a temporary capacity and has not been confirmed, if his service on any post under the Government is continuous and is for more than 15 years, then it may be considered as pensionable under Rule 59 of the Bihar /Jharkhand Pension Rules, 1950.

13. In the present case, the petitioner has worked for last 40 years as daily wager under the respondent-Government. The service of the petitioner has also been confirmed by the Government with effect from 18.10.2021. Therefore, in view of the notification issued under the proviso to Rule 59 of the Pension Rules, coupled with the fact that the petitioner's past service has been recognised by the respondents and only on recognition of past service, he has been appointed on regular post, he is entitled to pensionary benefits.

14. However, to recapitulate and substance the issue involved in this writ petition, it would be apposite to keep in mind that in our justice oriented jurisprudence, the Constitutional Courts are obliged to promote the constitutional ethos of social justice, which necessarily includes social security measure like post retrial dues. The pension of a person is not a bounty, but a right accrued to him, who has rendered his/her valuable service. The present case is eminent example of the apathy shown by the Welfare State towards the daily wager, who has worked for decades. He is unceremoniously told that he had worked as daily wager and as such, he is not entitled to post retrial social security benefit. One has to keep in mind that these daily wagers were appointed taking into consideration the exigency of day-to-day need of the administration. They have been regularised by using the nomenclature fresh appointment not as a man from open market, but in recognition of their past service as daily wager.

15. The nomenclature used in the order of appointment is fresh appointment is designed just to frustrate the past service and entitlement of pensionery benefits, despite the fact that the petitioner was regularised by

way of appointment against vacant and sanctioned post. Moreover, the appointment of the petitioner was made pursuant to a policy decision of the Government and the Government as per Rule 59 of the Pension Rules read with the notification issued thereunder provides that the employee who have completed 15 years of continuous service and even they were not confirmed, they are entitled for pension. It is not the case of the respondents that the petitioner was not in continuous service.

16. Similar issue fell for consideration before the Hon'ble Apex Court in case of ***Jharkhand State Non-gazetted Employees Federation and Ors. Vs. State of Jharkhand & Ors***, reported in **2019 SCC OnLine Jhar 3029**, wherein this Court referring the various judgements has held that the employees are entitled for pension taking into consideration the past service rendered by them. This judgement has been upheld upto the Hon'ble Supreme Court of India. As such, this issue is no more *res integra* and it is now well settled that the past services should be reckoned for extending the pensionary benefits.

17. Of Late, the Hon'ble Supreme Court, in a bunch of appeals preferred for counting service rendered in a work charged establishment for completing the same for pensionary benefits and the length of pensionable service, refused to accept the appeals and held that service rendered in work charged establishment before regularisation of service shall be counted for qualifying service for the purpose of pension only. The Hon'ble Supreme Court held that "*the period spent in the work charged establishment would be counted only to the extent of shortfall in qualifying period of service for grant of pension, which shall be made up by adding that period spent under the work charged establishment, and that the entire period spent under the work charged establishment would not be taken into account.*" This judgment is rendered in the cases of ***Uday Pratap Thakur & Anr. Vs. State of Bihar & Ors*** and other analogous appeals, reported in **2023 SCC OnLine SC 527**.

18. This Court in plethora of judgment viz. in **W.P.(S). No. 939 of 2012 (Bir Kaur Paswan & Ors. Vs. State of Jharkhand & Ors.)**; **W.P.(S). No. 3818 of 2018 (Tarkeshwar Singh Vs. the State of Jharkhand & Ors.)**; and in **W.P.(S). No. 7 of 2023 (Anirudha Tiwari Vs. the State of Jharkhand & Ors.)**, reiterated the same view.

19. The issues in question have been answered accordingly.

20. As a sequitur to the aforesaid rules, regulations, guidelines and judicial pronouncements, this Court held that the past service rendered by the petitioner shall be counted only to the extent of shortfall in qualifying period of service for grant of pension. The respondents are directed to extend the pensionary benefits accordingly within a period of twelve weeks from the date of receipt of a copy of this order.

21. With the aforesaid observations and directions, the writ petition stands allowed.

(Dr. S.N. Pathak, J.)

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