
(2015) 05 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3982 of 2015

Anju Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Citation : (2015) 3 PLJR 278

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Raj Kumar, for the Appellant; Ashok Kumar Choudhary, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—Heard learned counsel for the parties.

2. The two annexures under challenge are Annexure-9, dated 29.07.2013 and Annexure-12, dated 13.02.2014. By virtue of the two orders, claim of the petitioner for payment of pension, gratuity as well as appointment on compassionate basis, have been rejected by the respondent-authorities on the ground that the husband of the petitioner was working in the work-charge-establishment and not on the permanent roles of the State.

3. Facts are not disputed that husband of the petitioner, namely, Alok Kumar was initially appointed as a work-charge-employee on 12.01.1982. He was given a pay-scale while working as a work-charge-employee. He had also passed the Hindi noting and drafting examination in the year 1986. He worked uninterruptedly since his initial engagement till his life was cut-short by divine intervention on 02.01.2013. When the petitioner moved the authorities, looking for benefits like post-retiral dues, etc., the respondents have passed the order, contained in Annexure-9 and 12, virtually reiterating the position that the petitioner is not entitled to any benefit, because the husband was not a regular employee and remained as a work-charge-employee.

4. The predicament of the present petitioner is not different from thousands of such employees, who have been agitating and fighting for foothold and some dignity in their life. There have been many rounds of litigations as well as directions by the Court, which culminated, no doubt, into a notification issued by the Department of Finance, Government of Bihar and is dated 17.10.2013. The said resolution is Annexure-10 to the writ application. If Annexure-10 is taken into consideration, may be the State can hide behind the said resolution and deny the claim of the petitioner and absolve itself of any obligation or commitment to the petitioner.

5. But since such issues have also traveled to this Court earlier and the Court had applied its mind to the similar or identical facts and after taking into consideration other decisions on the issue held in favour of such petitioners, directed the State to extend the benefit to the widows, treating the husband of such widows to be permanent employees at least till the date of death.

6. Learned counsel for the petitioner has drawn the attention of the Court to a reported decision of *Bimli Devi Vs. The State of Bihar*, (2014) 4 PLJR 238 . The facts are identical and so was the spirited defence put up by the State counsel, but the Court had this to say in paragraph 3 to 8 of the said decision:

"3. Stand of the petitioner is that by virtue of a Division Bench decision dated 3.5.2007 rendered in CWJC No. 16060 of 2004, which was the case of Subhash Paswan and others vs. the State of Bihar and ors, the husband of the petitioner had to be treated as a regular employee and extended benefit especially when the above position was affirmed even by dismissal of SLP by the Hon''ble Apex Court. Her plea is that by virtue of the decision rendered in the case of *Koshi Project Worker's Association and Another Vs. State of Bihar and Others*, (2007) 113 FLR 301 : (2007) 1 PLJR 358 work-charge employees are supposed to be treated as permanent employee after a year. Besides, from time to time the State Government had also issued notifications for regularization of service of work- charge employee and even cut off dates have been extended by virtue of which benefits should have accrued by regularization of service of the husband of the petitioner. If there was omission on the part of the State, the failure is of the State. Even as recent as 17.10.2013, a notification has been issued by the State of Bihar extending the benefit of regularization to such employees. Merely because there is death of the husband of the petitioner prior to issuance of the said notification, the petitioner cannot be left to fend for herself.

4. Counsel for the petitioner also relies on a decision rendered in the case of *Most. Baby Devi and Others Vs. The State of Bihar and Others*, (2012) 3 PLJR 910 . Reliance is on paragraphs 14 and 15 of the said decision, which are reproduced herein below:

"14. Learned counsel for the petitioners in rejoinder submitted that original writ petitioner in CWJC No. 4517 of 2007 moved this Court in C.W.J.C. No. 6217 of 2003 for compliance of the Government circular dated 22.10.1984 and resolution

dated 23.10.1987, 20.9.1990 issued for regularization of the Work Charge Employees and this Court under orders dated 15.3.2004, Annexure-8 (in CWJC No. 4517 of 2007) directed the State- respondents to consider his case for regularization as per the cut-off date for entry in the Work Charge Establishment fixed under Resolution No. 6394 dated 23.10.1987 but the Commissioner-cum-Secretary of the Department ignoring the mandate of circular dated 22.10.1984 and resolution dated 23.10.1987, 20.9.1990 passed erroneous order dated 29.3.2006, which was assailed by the original writ petitioner of C.W.J.C. No. 4517 of 2007. During the pendency of C.W.J.C. No. 4517 of 2007, on account of ill-luck the original writ petitioner left for heavenly abode on 2.8.2008, as such, even though the right of the original writ petitioner to seek regularization may not be surviving but the widow petitioner No. 1 is entitled to enforce her right for grant of family pension. In this connection, learned counsel also relied on the judgment of the another Single Judge in the case of Shambhu Sharan Singh Vs. The State of Bihar and Others, (1998) 3 PLJR 908 . In the case relied upon the deceased employee was appointed by the competent authority as Choukidar in the Work Charge Establishment. While serving in the Work Charge Establishment for about six years he died on 6.1.80. Relying on the circular of the Government dated 22.10.1984 that Work Charge Employees completing five years of continuous satisfactory service is entitled to be regularized retiral benefits of the deceased Work Charge Employee was directed to be paid to the heirs of the deceased employee who died while serving in the Work Charge Establishment for more than six years.

15. In view of submission of the counsel for the State noted in paragraph 13 reliance placed by the counsel for the petitioners over the judgment of Division Bench in the case of Sangam Lal Yadav (supra) is misplaced, however, considering the submission noted in paragraphs 9, 11, 12, 14 and the contents of circular dated 22.10.1984 and resolution dated 23.10.1987, 20.9.1990, I set aside the order dated 29.3.2006, Annexure- 9 in C.W.J.C. No. 4517 of 2007 and direct that the husband of the substituted petitioner No. 1 of C.W.J.C. No. 4517 of 2007 and petitioner of C.W.J.C. No. 4600 of 2007 be regularized on the post of Watchman- cum- Peon and Roller Khalasi respectively with effect from the date they completed five years in Work Charge Establishment and petitioner No. 1 of CWJC No. 4517 of 2007 be paid family pension with effect from the date of death of her husband i.e. 2.8.2008, as early as possible, in any case within two months of the date of receipt of a copy of this order before the Secretary of the department. Within the same time respondent State should also extend the cut-off date fixed for regularization of the Work Charge Employee from 21.10.1984 to 11.1.1990 as was done in the case of Muster Roll Workers from 1.8.1985 to 11.1.1990 under resolution No. 489, dated 10.5.2005 of the Government in appreciation of the fact that Work Charge Employees are superior in status to the Muster Roll Workers who are paid wages for the days on which they are actually engaged whereas the Work Charge Employees are paid salary as per the scale admissible for the post on which they are serving and are also allowed the

benefit of pay revision and other service conditions admissible for regular employees."

5. Stand of the State in the counter affidavit is that the engagement of the petitioner's husband in the year 1982 was for a limited period of six months. Only such persons, who had completed five years of continuous service before cut off date on 21.10.1984, were required to be regularized as per the resolution dated 23.10.1987. There is yet another resolution No. 5074 dated 20.9.1990, which indicates that only such work- charge employees would be entitled for regularization, who were appointed on or before 21.10.1984. Since petitioner's husband did not fulfill the requirements, the respondent authorities have refused to take any decision in favour of the petitioner. They also tried to draw advantage of a Division Bench decision rendered in Annexure- D.

6. Even though the State could be correct to some extent in taking a plea that the decision rendered in Koshi Project (Supra) may not state the correct law in view of the Full Bench decision rendered in Durganand Jha and Others Vs. The State of Bihar and Others, (2007) 4 PLJR 259 . But the Court cannot ignore the fact that the petitioner's husband continued to work uninterruptedly for 26 years before he died. If there was omission on the part of the State authorities to regularize his service and confer him benefit then the said omission cannot be detrimental to claim and interest of the present petitioner.

7. 26 years of long service is an indicator of the fact that the engagement of the petitioner's husband did not remain a casual engagement or appointment and had acquired nature of permanency by sheer length of service rendered. In addition to above, if what has been seen and opined by the learned single Judge in paragraphs 14 and 15 of Most. Baby Devi's case (supra) then obviously the claim of the petitioner comes within the ambit of the said decision and a case is made out for a direction upon the respondent authorities to consider grant of family pension and other benefits to which she may be entitled to by treating her husband to be a regular employee under them.

8. The writ application is allowed on the basis of the ratio rendered in the case of Most. Baby Devi (supra). The respondent authorities must settle the claim of the petitioner within a period of three months from the date of production/ communication of a copy of this order."

7. Keeping in view the ratio reproduced in earlier part of the Order, the writ application of the petitioner has to succeed. The two impugned orders, contained in Annexure-9 and 12, dated 29.07.2013 and 13.02.2014 respectively are quashed. Respondents are directed to take a decision for grant of pension and other benefits to the petitioner within a period of three months from the date of production/communication of a copy of this Order treating the husband of the petitioner to be a regular employee till the time of his death, i.e., 02.01.2013 only for the purpose of pension etc. and not for previous pay and benefits of such kind.

8. Writ application is allowed.