

(2005) 05 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 6826 of 2002, 2166 and 2210 of 2003 and 1750, 3254, 3588, 3854, 3963, 4264, 4360, 4744, 6437 and 6471 of 2004

Ram Prasad Singh and Another and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Bihar Pension Rules, 1950 — Rule 44, 45, 58, 59, 59(1)
Bihar Public Works Department Code — Rule 35, 36, 38, 48, 58
Bihar Service Code, 1952 — Rule 19, 29
Constitution of India, 1950 — Article 309
Pension (Amendment) Rules, 1970 — Rule 2, 61

Citation : (2005) 3 JCR 9

Hon'ble Judges : S.J. Mukhopadhaya, J;N.N. Tiwari, J;M.Y. Eqbal, J

Bench : Full Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—All these cases relate to condition of services of work-charged employees of the State. Common questions of law being involved in all the writ petitions, they have been heard together and are being disposed of by this common judgment.

2. In 1st set of the cases i.e. W.P. (S) Nos. 2166 of 2003, 2210 of 2003, 1750 of 2004, 3254 of 2004, 3588 of 2004 and 6826 of 2002 the petitioners have prayed for a direction on the respondents to regularize their services by taking over their services along with posts in the permanent (regular) establishment of the State.

3. In 2nd set of the cases i.e. W.P. (S) Nos. 3854 of 2004, 6471 of 2004, 4360 of 2004 and 4744 of 2004, the petitioners have prayed for a direction on the respondents to consider their cases for compassionate appointments. In some of the cases, their claim have been rejected by the respondents.

4. In the 3rd set of the cases i.e. W.P. (S) Nos. 3963 of 2004, 4264 of 2004,

6437 of 2004 the petitioners have prayed for a direction on the respondents to pay them the death-cum-retiral benefits, such as, family pension, gratuity, leave encashment, provident fund, group insurance etc.

5. The questions, involved in these writ petitions, are :

(a) Whether a work-charged employee of the State of Jharkhand can claim for consideration of his case for taking over his services in the permanent (regular) establishment? If so, is it applicable only to those, who have been appointed prior to 21st October, 1984 and completed more than five years of service in the work-charged establishment or to any work-charged employee, who has completed five years of service in the work charged establishment and is otherwise eligible and fit, irrespective of a cut-off date of appointment?

(b) Whether a dependant of a deceased work-charged employee can claim consideration of his claim for appointment in the services of the State on compassionate ground in terms of the policy/scheme, framed by the State Government? and

(c) Whether a work-charged employee or his nominee or heir is entitled to the dead-cum-retiral benefits, such as, pension/family pension, gratuity, leave encashment, provident fund, group insurance amount etc. to which a temporary Government employee is entitled?

6. To determine the issues, it is necessary to notice relevant facts of the cases in hand, Acts, Rules and Circulars/Guidelines, issued by the State Government from time to time.

CASES RELATING TO TAKING OVER THE SERVICES OF THE EMPLOYEES IN THE PERMANENT (REGULAR) ESTABLISHMENT/REGULARISATION OF SERVICES,

W.P. (S) No. 2166 of 2003 (Subhash Mandal and another v. State and others).

The case of both the petitioners is that they were initially engaged on daily wages as Jeep Driver (1st petitioner) and Van Driver (2nd petitioner) in the Public Health Engineering Division, Seraikella, in the year 1991 and 1985 respectively. They having completed more than 240 days of service requested the respondents to consider their cases for regular appointments. The respondents considered their cases and placed the matter before the Establishment Committee. In its meeting held on 18th July, 1994, after considering their cases along with other similarly situated persons, the Establishment Committee recommended for appointment of these petitioners as Drivers in the work-charged Establishment. Copy of the proceeding has been enclosed as Annexure-2 to the writ petition.

Further case of the petitioners is that on the recommendation of the Establishment Committee, they were appointed as Jeep Driver and Van Driver respectively in the pay scale of Rs. 950-1500/- in the work-charged Establishment vide Order No. 52, dated 18th July, 1995. On 28th January, 1997,

the respondents issued a show cause notice on 1st petitioner vide Memo No. 76, whereby, he was asked to show that he was appointed on regular basis, to which he replied. In the meantime, it was also decided by the State Government to terminate the services of daily wage workmen, appointed after 1st August, 1985. But the circular of the State Government being not applicable to these petitioners, no order of termination of their services was issued. According to the petitioners, they have completed more than fifteen to twenty years of services under the State and more than eight years as a regular work-charged employee. Their grievance is that though they are entitled for consideration of their cases for taking their posts and services in the permanent (regular) establishment, as per statutory rules, circulated by Memo No. 1344, dated 4th February, 1949, their cases have not been considered for the same.

W.P. (S) No. 2210 of 2003 [Lalan Singh v. State and others).

The case of the present petitioner is that he was engaged on daily wage basis on 16th September, 1981 to perform the duties of chowkidar in Rural Engineering Organization, Works Division, Sahibganj. Subsequently, when a post of Driver fell vacant he being qualified and having possessed driving licence, was appointed as Driver on 15th May, 1987 in the pay scale of Rs. 480-580/- in the Rural Engineering Organization, works Division, Sahibganj. His case was considered by the Executive Engineer, who sent his recommendation to the Superintending Engineer, Rural Engineering Organization, Work Circle, Dumka, by letter dated 26th December, 2000 for taking over his services in the permanent (regular) establishment. His service book and other records were also forwarded. The Superintending Engineer, in his turn, forwarded the matter to the Chief Engineer Rural Engineering Organization, Ranchi, by letter dated 4th August, 2001.

Grievance of the petitioner is that though the services of one similarly situated employee, namely, Vinay Kumar, who was working as chowkidar in the work-charged establishment, have been taken over in the permanent (regular) establishment vide Order dated 22nd January, 2002, his case has not been considered for taking over his services in the permanent (regular) establishment.

W.P. (S) No. 1750 of 2004 [Ram Pravesh Sahu and others v. State and others).

According to these petitioners, they were engaged on daily wages in the year, 1980-81 to perform the duties of Class IV employees, such as, Kuli, Mali, Sweeper, Khalasi, Telephone Attendant etc. in the work-charged establishment of Public Health Engineering Department (now known as Drinking Water and Sanitation Department). Later on, they were appointed against vacant sanctioned posts in the work-charged establishment.

1st petitioner Ram Pravesh Sahu was appointed as Telephone Attendant" in the work-charged establishment in the pay scale of Rs. 350-425/- vide Order No. 39, dated 25th March, 1982. 4th petitioner All Mohammad Ansari was appointed as "Khalashi" in the work-charged establishment in the pay scale of Rs. 350-425/ vide Order No. 59, dated 1st May, 1982. 3rd petitioner Md. Kasim Ansari was

appointed as "Khalashi" in the work-charged establishment in the pay scale of Rs. 350-425/- vide Order No. 60, dated 1st May, 1982. 2nd petitioner Mundrika Yadav was appointed as "Road Kuli" in the work-charged establishment in the pay scale of Rs. 350-425/- vide Order No. 61, dated 1st May, 1982. 5th petitioner Jag Narayan Sahu, 6th petitioner Smt. Basanti Devi, 7th petitioner Budh Ram Oraon, 8th petitioner Anand Kashyap and 9th petitioner Budhuwa Munda were appointed as "Helper", "Mali", "Chemical Khalashi" etc. in the work-charged establishment in the then pay scale of Rs. 350-425/- by a common order No. 23, dated 9th August, 1982.

According to these petitioners, they have completed more than twenty years of service in the work-charged establishment and are working against sanctioned posts and are getting salary in the regular scale of pay. Although they are entitled for consideration of their cases for taking over their services in the permanent (regular) establishment as per the Government Circular No. 3058-B, dated 22nd October, 1984, Resolution No. 32, dated 4th January, 1989 Memo No. 6394, dated 23rd October, 1984 and Resolution No. 5074, dated 20th September, 1990, their cases have not yet been considered for taking over their services in the permanent (regular) establishment.

W.P. (S) No. 3254 of 2004 (Sadhu Oraon and others v. State and others).

The case of these five petitioners is that they were appointed in the work-charged establishment and are working since 1980-82. The 1st petitioner Sadhu Oraon was appointed on compassionate ground for three months by letter No. 865, dated 18th September, 1980 as "Road Mazdoor" in the then pay scale of Rs. 155-190/-, which was extended from time to time by orders, contained in letter No. 1480, dated 16th December, 1980, Memo Nos. 462, dated 17th March, 1981, 1445, dated 18th September, 1981 etc. The 2nd petitioner Pusna Oraon was also appointed on compassionate ground as "Road Mazdoor" vide Order No. 128, dated 23rd January, 1981, which was extended from time to time vide Memo Nos. 752, dated 5th May, 1981, 1445 dated 18th September, 1981 etc. The 3rd petitioner Uma Devi was appointed on compassionate ground as "Mali" by Memo No. 451, dated 27th March, 1982, in the then pay scale of Rs. 350- 425 and 4th petitioner Budhua Oraon was appointed on compassionate ground as "Road Mazdoor" by Letter No. 672, dated 25th June, 1984 in the then pay scale of Rs. 350-425/-. 5th petitioner Subodhani Devi was also appointed on compassionate ground by Letter No. 1521, dated 27th December, 1980 as "Road Mazdoor" in the then pay scale of Rs. 155-190/-, which was also extended from time to time vide Memo Nos. 485, dated 26th March, 1981, 1000, dated 27th June, 1981 etc.

The appointments of all these petitioners were made in the work- charged establishment of National Highway Divisions under the Road Construction Department of the State of Bihar (now Jharkhand). Their grievance is that though they are working for more than twenty-four years and are still in service, their cases have not been considered for taking over their services in permanent (regular) establishment of the State in terms of the Rules/Guidelines. Their

further grievance is that the salary of certain period, details of which have been given in the writ petition vide Annexure-10, have not been paid to them for want of allocation/release of fund.

W.P. (S) No. 3588 of 2004 {Ajay Ram v. State and others}.

According to the petitioner; Ajay Ram, he was engaged on daily wages in the work-charged establishment in the year 1983. Later on he was appointed as "Peon" in the work-charged establishment in the regular pay scale vide Memo No. 984, dated 19th June, 1987 and since then he has been performing his duties.

Grievance of the petitioner is that the respondents have not considered his case for taking over his service in the permanent (regular) establishment as per the statutory Rules/Guidelines, issued by the State. Further grievance of the petitioner is that he has not been paid the salary and other allowances for certain period, as detailed in the writ petition. Presently he is posted in the work-charged establishment of Road Construction Division, Lohardaga and is getting the salary in the revised pay scale of Rs. 2550-3200/-.

W.P. (S) No. 6826 of 2002 (Ram Prasad Singh and another v. State and others).

In the instant case, the 1st petitioner was initially engaged on muster roll basis in Rural Engineering Organization, Works Division, Giridih on 1st April, 1981 and was asked to perform the duties of chowkidar. Subsequently, he was appointed as chowkidar in the work-charged establishment vide Officer Order 54, dated 9th November, 1987 in the then pay scale of Rs. 350-425/-. The 2nd petitioner was initially engaged as "Roller Driver" on muster roll basis on 1st August, 1981 in the said Giridih Division and later on was appointed as "Roller Driver" in the regular pay scale of Rs. 480-680/- in the work-charged establishment.

Grievance of these petitioners is that though they have completed more than fifteen years of service in the work-charged establishment, their cases have not been considered for taking over their services in the permanent (regular) establishment. The petitioners have cited examples of other work-charged employees, whose services have been taken over in the permanent (regular) establishment on completion of ten years of service.

CASE RELATING TO COMPASSIONATE APPOINTMENT

W.P. (S) No. 3854 of 2004 (Nawab Ahmad v. State and others).

According to the petitioner, his father late Md. Yunus was in the services of the State, working as "Jeep Driver" in the work-charged establishment in the office of the Assistant Engineer, Rural Engineering Organization, Seraikella Sub-Division, since 24th March, 1983 in the then pay scale of Rs. 423-605/-. Though he became eligible for being taken over his services in the permanent (regular) establishment, as per the Rules/Guidelines, issued by the State, his case was not considered and he died in harness on 3rd December, 1995. In spite of

representation of the petitioner (Nabab Ahmad), his case was not considered for compassionate appointment and, therefore, he had to move before Ranchi Bench of Patna High Court in CWJC No. 2848 of 2000 (R). A Bench of the High Court by its order dated 1st September, 2000 remitted his case to the respondents with a direction to pass reasoned order on his application. Thereafter, his case was considered by the compassionate Appointment Committee, which in its meeting, as communicated vide Memo No. 378, dated 22nd May, 2001, rejected his claim on the ground that the post against which his father was working, was not made permanent and thereby, his case can not be considered for compassionate appointment. But it was observed that if the case of the deceased employee is considered notionally in future for taking his services in the permanent (regular) establishment, in that case the petitioner's (Nabab Ahmad's) claim can be reconsidered.

W.P. (S) No. 6471. of 2004 (Amrit Bahadur Thapa v. State and others).

Case of this petitioner is that his father late Dil Bahadur was working as "Chowkidar" in Subernrekha Multi Purpose Project, Chandil Circle, since the year, 1983 and died in harness on 27th October, 2003. He was initially engaged on daily wages to perform the duties of "Chowkidar" but later on, he was appointed against a vacant post of "Chowkidar" on temporary basis in pursuance of Chief Engineer's Order No. 505, dated 3rd March, 1988. After his death, the Chief Engineer sanctioned a sum of Rs. 3000/- in favour of the petitioner for performance of last rites.

Grievance of the petitioner is that though he applied for compassionate appointment, the respondents refused to entertain his application on the ground that the dependants of deceased work-charged employees are not entitled for compassionate appointment. It is stated that the services of those, who are similarly situated like his father late Dil Bahadur, have been taken over in permanent (regular) establishment vide Memo No. 1353, dated 28th July, 2004.

W.P. (S) No. 4360 of 2004 (Alok Kumar v. State and others).

Case of this petitioner is that his father late Birendra Kumar Singh was in the services of the State, working as "Pump Operator" in the Public Health Engineering Department, Pump House, Namkom since 1st August, 1981. Initially he was a muster roll worker but later on, he was appointed against a regular post of "Pump Operator" in the work-charged establishment (pay scale of Rs. 400-540) vide Order No. 64, dated 17th February, 1988. He was granted annual increments from time to time and his scale of pay was also revised. Later on, he died in harness on 22nd of December, 2001.

Grievance of the petitioner is that the respondents have arbitrarily rejected his claim for compassionate appointment vide Letter No. 147, dated 26th February, 2003.

W.P. (S) No. 4744 of 2004 (Kamlesh Kumar Sah v. State and others).

According to the petitioner, his father late Satya Narayan Sah was in the services of the State, who was initially engaged as "Pump Khalashi, on daily wage on 10th October, 1980 and was posted at "Shahri Jalashay Kendra, Chas". He along with nine others was appointed against vacant post in the work-charged establishment vide Office Order No. 44, dated 2nd February, 1988 as "Pump Khalashi" in the then pay scale of Rs. 350-425/-. He continued in the services of the State till 8th May, 2003 when he died in harness.

Grievance of the petitioner is that the respondents have not considered his case for compassionate appointment, though he applied within time. It is stated that the services of those, who are similarly situated like his father and have completed ten years of service in the work-charged establishment, have been taken over in the permanent (regular) establishment by orders dated 24th January, 1986 and 23rd July, 1987.

CASE RELATING TO PAYMENT OF DEATH-CUM-RETIRAL BENEFITS, SUCH AS, PENSION, GRATUITY, LEAVE ENCASHMENT ETC.

W.P. (S) No. 3963 of 2004 (Mostt. Zubaida Khatoon v. State and others).

Petitioner Most. Zubeda Khatoon is the widow of the late Md. Yunus. According to the petitioner, her husband was in the services of the State in its Rural Engineering Organization. He was working as Jeep Driver since 1982 under Assistant Engineer, Rural Engineering Organization, Sub-Division Seraikelta, and died in harness on 3rd December, 1995. After his death, the widow moved before Ranchi Bench of Patna High Court by filing writ petition bearing CWJC No. 3052 of 2000 (R) for payment of death- cum-retiral benefits, which was disposed of on 13th February, 2000 with a direction to the respondents to decide the claim and to pay the admitted dues. No benefits having been paid, a second writ petition bearing CWJC No. 1167 of 2001 was filed before this Court for same relief, which was also disposed of on 26th March, 2001.

It appears that the respondents have considered the case of the petitioner and have rejected her claim for family pension and gratuity by Letter No. 337, dated 2nd July, 2001, issued by the Executive Engineer, Rural Engineering Organization, Works Division, Chaibasa. Leave encashment was earlier allowed vide Memo No. 666, dated 9th August, 1996. It further appears that after the death of the employee, his pay was re-fixed on the basis of revised scale of pay vide Memo No. 1087, dated 22nd November, 1996 and information was given to the widow.

From Letter No. 1890, dated 1st June, 2001, issued by the Finance Commissioner, Jharkhand, Ranchi, as enclosed with the counter affidavit, filed by 4th respondent, it appears that late Md. Yunus was appointed in the work-charged establishment on 24th March, 1982. He having not completed five years of service on 21st October, 1984, his service was not taken over in the permanent (regular) establishment, in terms with Finance Department Memo No. 6394, dated 23rd October, 1984. For the said reason, it has been informed that

the widow is not entitled for the family pension and gratuity. Similar stand has been taken by the respondents in their counter affidavit.

W.P. (S) No. 4264 of 2004 (Birasmani Devi v. State and others).

According to the petitioner, her husband late Kandra Singh was in the services of the State, who was appointed in the work-charged establishment on the post of "Road Mazdoor (literate)" on 8th December, 1977 In the regular scale of pay. His pay was revised from time to time. Later on, he died in harness on 20th October; 1997.

Grievance of the petitioner is that the respondents have not considered the case of her husband for taking over his services in the permanent (regular) establishment, though he had completed more than five years of service, prior to 21st October, 1984, nor the death-cum-retiral benefits, such as, family pension, gratuity etc. have been paid to her.

W.P. (S) No. 6437 of 2004 (Dugi Mundainv. State and others).

Case of this petitioner is that her husband late Kalia Munda was in the services of the State, who was appointed in the work-charged establishment against the post of "Chowkidar" on 1st April, 1981 under the Assistant Engineer, Road Division, Bano, District Gumla. He was getting salary in the regular pay scale and while in service, died on 14th August 1997.

Grievance of the petitioner is that the respondents have not paid the death-cum-retiral benefits, such as, family pension, gratuity etc. to her.

7. A counter affidavit has been filed by 2nd respondent in W.P. (S) No. 6437 of 2004, enclosing therewith copies of some of the relevant Rules/Guidelines, framed/issued by the State Government from time to time. Learned Advocate General appeared on behalf of the State relied on the enclosures, attached to the counter affidavit, and the Rules, framed by the State Government, and has opposed the prayer, made in all the writ petitions. Learned counsel for the Accountant General, Bihar and Jharkhand, has also opposed the prayer for payment of pension/family pension, gratuity etc. to a retired work-charged employee or dependant/heir of a deceased work-charged employee.

8. For proper appreciation of the issues, it is desirable to notice the relevant Rules/Guidelines framed/issued by the State Government from time to time.

9. In the then State of Bihar (now successor States of Bihar and Jharkhand) there were establishments of different natures, such as, permanent, establishment, commonly known as regular establishment, temporary establishment and work-charged establishment. Work-charged establishments are found only in Works Departments, such, as, Public Works Department (P.W.D.), now known as Road Construction Department and Building Construction Department; Public Health Engineering Department (P.H.E.D.), now known as Drinking Water and Sanitation Department, Water Resources Development

Departments, such as, Irrigation and Minor Irrigation Departments, Rural Engineering Organization etc.

10. Rule 59 of the Bihar P.W.D. Code deals with work-charged establishment and reads as follows :

"59. Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision of a specific work or of sub-works of a specific project or upon the subordinate supervision of departmental labour, stores and machinery in connection with such work or sub-work. When employees borne on the temporary establishment are employed on work of this nature their pay should, for the time being, be charged direct to works."

Note 3 below Rule 59 being also relevant is quoted hereunder :

"Note 3. Posts borne on work-charged establishments which are required throughout the year for maintenance works etc., or for a long and indefinite period should be made permanent and included in the permanent establishment with the approval of Government."

11. The work-charged establishment has been defined by the Supreme Court in the case of Jaswant Singh and Others Vs. Union of India (UOI) and Others, which read with as follows :

"A work-charged establishment broadly means an establishment of which the expenses, including the wages and allowance of the staff, are chargeable to works. The pay and allowances of employees who are borne of a work-charged establishment, are generally shown as a separate subhead of estimated cost of the works."

12. The aforesaid definition was also noticed by the Supreme Court in the case of State of Maharashtra Vs. Purshottam and Others, In the aforesaid two cases, there was no condition of service, framed by the State with regard to the work-charged employees. In the case of Jaswant Singh (supra) the Supreme Court observed that the work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefit under the Employees State Insurance Scheme". However, the Supreme Court held that the work-charged employees are entitled to the benefits of the provisions, contained in the Industrial Dispute Act, 1947.

13. So far as the State of Bihar (now successor States of Bihar and Jharkhand) is concerned, the State Government has laid down "condition of service of the work-charged employees", circulated vide Finance Department's Memo No. 1344, dated 4th February, 1949, as quoted hereunder :-

"Subject- Revised conditions of service of work- charged establishment.

The existing distinction between work-charged establishment temporary and permanent establishment and daily labour as given in the PW Code and P.W.D. Accounts Code will be maintained but the conditions of service of work-charged establishment will hence forth be identical with those of temporary Government servants.

The posts in work-charged establishment which are of permanent nature, that is required for 12 months in the year and for long and indefinite period will be made permanent and included in permanent establishment and the men employed on these posts, having one year's approved service will be included amongst permanent Government employees. Deaths in this connection are being worked out and till this is done the conditions of service applicable to temporary Government servants will apply to all work-charged posts. Vide F.D. Memo No. 1344, dated 4.2.1949."

14. In the year 1950 the Government of Bihar framed a Rule under proviso to Article 309 of the Constitution of India, whereby all Enactments, Rules and orders, regulating recruitment and condition of services of persons, appointed under the State, which were in force immediately before 26th January, 1950, were declared to be Rule as if made under proviso to Article 309 of the Constitution of India. This was gazetted on 26th April, 1950 and is quoted hereunder :

"Bihar Gazette

P.1.2(ii)-No. 17, dated 26th April, 1950

Political and Appointment Department, Government of Bihar Notification No. 3555-31-27 50-A, dated 15th April. 1950

In exercise of power conferred by the proviso to Article 309 of the Constitution of India the Governor of Bihar is pleased to make the following rules, namely :-

All enactments, rules and orders which are made under any enactment or otherwise, which regulated the recruitment and condition of services of persons appointed through public services and posts in connection with the affairs which are now the affairs of the State of Bihar and which are enforced immediately before the 26th January, 1950, shall until provision is made by or under any act of the State legislature to regulate such recruitment and conditions of service, be enforced as if they had been make by virtue of the power under the said proviso.

By the order of Governor, Bihar

Sd. I.P. Singh

Chief Secretary."

15. A single Judge of Patna High Court, while dealing with the matter of work-charged employees of Public Health Engineering Department in the case of Tulsi

Prasad Singh v. State of Bihar and others, reported in 2001 (3) PLJR 15, held the aforesaid guidelines dated 4th February, 1949, deemed to be a Rule, framed under proviso to Article 309 of the Constitution of India, in view of the Gazette Notification dated 26th April, 1950.

REGULARIZATION OF SERVICE/TAKING OVER THE SERVICES IN THE PERMANENT (REGULAR) ESTABLISHMENTS.

Note-3 below Rule 59, as quoted above, insists on the officers that the posts borne on work-charged establishment, which are required throughout the year for the maintenance of work for a long and indefinite period, are to be made permanent and included in the permanent establishment with the approval of the Government. The word "should", so used, suggests the said provision is mandatory. The members of the work-charged establishment had no separate condition of service till the guidelines (now statutory rule, framed under proviso to Article 309 of the Constitution) came into effect on 4th February, 1949. Provision similar to Note 3 below Rule 59 was made under 1949 Rules. In addition, it was laid down that the members of the work-charged establishment working on those posts, having one year approved service, will be included amongst the permanent Government employees.

The State of Bihar from its different Works Department regularized the services of work-charged employees by taking over their services in the permanent (regular) establishment. Generally their cases were used to be considered on completion of ten years of services in the work-charged establishment. However, in Irrigation Department and Road Construction Departments, services of the work-charged employees, who had completed five years of continuous services on sanctioned posts, were taken over in the permanent (regular) establishments, subject to fitness. This discrepancy having been noticed, the State of Bihar vide its Memo No. PC 2-29-02/84-3058-B, dated 22nd October, 1984 decided that services of all the work-charged employees, who have completed five years satisfactory service on one post, against whom there is no proceeding or criminal cases pending, shall be taken over in the permanent (regular) establishment. Giving reference to Finance Department's Letter No. 8954 dated 23rd July, 1975 it was also informed that no further post should be created in the work-charged establishment nor the vacant posts should be filled up.

A large number of cases were filled by work-charged employees for taking over their services in the permanent (regular) establishment i.e. for regularization of services. In the case of Tulsi Prasad Singh (supra) the Court having noticed the guidelines contained in Finance Department's Memo No. 1344, dated 4th February, 1994 and the Gazette Notification No. 17, dated 26th April, 1950 held that 1949 Guidelines and a Rule, deemed to have been framed under the proviso to Article 309 of the Constitution of India.

Learned Advocate General submitted that 4th February, 1949, Guidelines was a temporary scheme, framed for only those, who were working in the work-

charged establishment as on the said date i.e. 4th February, 1949; it is not applicable to those, who have been appointed subsequently. It was also submitted that the 1949 Guideline is a one time scheme and not a Rule and, therefore, the Rule dated 26th April, 1950 will not cover the Finance Department's Memo No. 1344, dated 4th February, 1949. It was suggested that the Finance Department had no jurisdiction to issue any guidelines, laying down condition of service of the State Government employees.

The aforesaid submission, made on behalf of the State can not be accepted in view of the plain language of the guidelines dated 4th February, 1949, which relates to condition of service of the members of the work-charged establishments including those, who were in service and those, who may be appointed in future. The submission also seems contrary to the Government decision, as contained in Memo No. PC-229-02/84-3058-B, dated 22nd October 1984 and Resolution No. 3/PAR-03/51/88 5074, dated 20th September, 1990, whereby it was decided to take over the services of those, who have completed five years of service in the work-charged establishment and appointed prior to 21st October, 1984.

So far as power of Finance Department is concerned, the guidelines having been issued by the State, it (State Government) can not challenge its own decision that too as a respondent to a writ petition.

The Rule, framed under proviso to Article 309, gazetted on 26th April, 1950, as quoted above, covers all Enactments, Rules and Orders, which are made under any Enactment or otherwise, which regulated the recruitment and condition of services of persons, appointed in the services of the State and post. As the guidelines dated 4th -February, 1949 relates to condition of service of the members of work-charged establishment and posts in connection with the affairs of the State, it can be safely stated that the guidelines dated 4th February, 1949 is deemed to be a Rule, framed under proviso to Article 309 of the Constitution of India, as held by Patna High Court in the cases of Tulsi Prasad Singh (supra), as referred to above.

It may be mentioned that similar decision, holding the guidelines dated 4th February, 1949 as a Rule, framed under proviso to Article 309 of the Constitution, rendered by Ranchi Bench of Patna High Court in CWJC No. 3196 of 1999, has been upheld up to the Supreme Court in SLP No. 1235 of 2002, which has also been accepted by the State of Jharkhand in its officers meeting held on 4th December, 2003. In such a situation it is now not open to the learned Advocate General to take altogether a different stand before this Court. I, therefore, hold that the condition of service of the members of work-charged establishment, as was laid down and circulated vide Finance Department's Memo No. 1344, dated 4th February, 1949 is a Rule, deemed to have been framed under the proviso to Article 309 of the Constitution of India.

In the statutory 1949 Rule dated 4th February, 1949, there is no cut-off date,

fixed for consideration of the cases of work-charged employees for taking over their services in the permanent (regular) establishment. No minimum qualifying period of service was laid down under the said Rule 1949. In some of the departments, on completion of ten years of service their cases used to be considered for taking over their services, in permanent (regular) establishment. In some departments, such cases used to be considered on completion of five years of service in the work-charged establishment. The State Government for the first time vide its Memo No. PC 2-29-02/ 84-3058-B, dated 22nd October, 1984, laid down the qualifying period of "five years of continuous service against one post in work-charged establishment" for taking over services in the permanent (regular) establishment, but no cut-off date was fixed therein. It is only by a subsequent Resolution No. 3/PAR-03/51/88-5074, dated 20th September, 1990 while constituting a Selection Board, it was ordered to take over the services of only those, who were appointed in the work-charged establishment, prior to 21st October, 1984, meaning thereby not to take over the services of those, appointed after 21st October, 1984.

It is a settled law that the State Government has power to issue administrative instructions by way of supplementing the rules; the Government has power to fill up the gaps in the rules, by issuing administrative instructions, if the rules are silent on the subject, provided the same is not inconsistent with the statutory rules, already framed. In the present case, the appointment and condition of service of work-charged employees are governed by rule dated 4th February, 1949, commonly known as 1949 Rule , a rule deemed to have been framed under proviso to Article 309 of the Constitution of India. No cut-off date of appointment and minimum period of continuous service in the work- charged establishment has been fixed therein. In the circumstances, it was open to the State Government to prescribe the minimum qualifying period of five years of continuous service in the work-charged establishment, as was made vide memo No. PC II 2902/84-3058-B, dated 22nd October, 1984. So far as work-charged employees appointed prior to 20th September, 1990 are concerned, they have acquired a right of consideration of their cases for taking over their services in the permanent (regular) establishment on completion of five years of continuous services in the work-charged establishment in terms of 1949 Rules read with Circular No. 3058-B, dated 22nd October, 1984. Such right cannot be taken away by issuing an administrative instruction. Resolution No. 3/PAR-03/51/ 88-5074, dated, 20th September, 1990 being in conflict with 1949 Rule, can not be upheld. Further the cut-off date i.e. 21st October, 1984, as prescribed vide Memo dated 20th September, 1990, for consideration of the cases of work-charged employees for taking over their services in the permanent (regular) establishment, having no nexus with the object to achieve is also to be declared arbitrary, unreasonable and illegal. It is declared accordingly.

Thus, the argument of learned Advocate General that the petitioners have not completed five years of service as on 21st of October, 1984 for taking over their services in the permanent (regular) establishment, can not be accepted for the

reasons, mentioned hereinabove, and the same is accordingly, rejected.

In fact, the State of Jharkhand has . accepted that the guidelines issued on 4th. February, 1949, is a statutory Rule and the cases of work-charged employees have to be considered for taking over their services in the permanent (regular) establishment. It will be evident from the proceeding of a Committee, consisting of different Secretaries of Government of Jharkhand, dated 4th December, 2003, as circulated vide Memo No. 9334, dated 16th December, 2003 of the Rural Development Department Government of Jharkhand. In the said meeting, Commissioner-cum-Secretary, Finance Department, Commissioner-cum-Secretary, Road Construction Department," Commissioner-cum-Secretary, Drinking Water and Sanitation Department, Secretary, Labour Employment and Training Department, Representative of Secretary, Water Resources Department, Secretary, Building Construction Department, Secretary, Energy Department, Secretary, Law (Justice) Department and Secretary; Rural Development Department, all of Government of Jharkhand, had taken part. It was decided to take up the cases of work-charged employees for consideration of their cases to take over their services in the permanent (regular) establishment after following the guidelines, including the reservation policy. The Road Construction Department also noticed the decision of this Court, rendered in CWJC No. 3196 of 1996, as affirmed by Division Bench of this Court and Supreme Court in SLP No. 1235 of 2002 and decided to consider the cases of all the work-charged employees, appointed prior to 21st October, 1984 for taking over their services in the permanent (regular) establishment, as has been circulated by the Additional secretary, Road Construction Department, Government of Jharkhand, Ranchi, vide Memo No. 3664 dated 25th September, 2004.

As referred to above, in the case of Tulsi Prasad Singh (supra), Patna High Court has held that the work-charged employees, who had completed five years of services, are entitled to be considered for taking over their services in the permanent (regular) establishment. Similar is the view of the learned Single Judge in the case of Arjun Sharma v. State of Bihar and others, reported in 2001 (2) JLJR 203. The guideline dated 4th February, 1949 was also held to be a Rule, framed under proviso to Article 309 of the Constitution of India and the cut-off date of 21st October, 1984, fixed vide Resolution No. 5074, dated 20th September, 1990, was not accepted and the Court held that the executive instruction can not override the 1949 statutory Rule.

COMPASSIONATE APPOINTMENT:

Counsel for the petitioners relied on the decisions, rendered by this Court and the Patna High Court to support the contention that the dependants of deceased work-charged employees are also entitled for consideration of their cases for appointments on compassionate ground.

In the case of Smt. Meera Devi v. State of Bihar and others, reported in 2000 (1) PLJR 493, the learned single Judge of Patna High Court noticed the guideline,

contained in Memo No. 1344, dated 4th February, 1949, and held the same a Rule, deemed to be framed under proviso to Article 309 of the Constitution of India, and further held that the dependants of the deceased work-charged employees are entitled for consideration of their cases for compassionate appointments, as the condition of service of work-charged employees are identical to the temporary Government employees.

In the case of Smt. Lali Sinha v. State of Bihar and others, reported in 2003 (1) JLJR 597, similar finding has been given by the learned single Judge of this Court. In the case of another widow Smt. Urmila Devi Vs. State of Jharkhand, learned single Judge of this Court held that as the deceased work-charged employee was governed by the condition of service of a temporary Government employee, his dependant widow is entitled to the retiral benefits and compassionate appointment. The scheme for compassionate appointment was initially framed by the State of Bihar vide Memo No. 3/R/1-304/74 (ka) 12754 dated 12th July, 1977, issued from its Personnel and Administrative Reforms Department. The benefit was allowed in favour of dependant of a Government employee, who died while in service. It was reiterated vide Memo No. 3/R-3039/82 dated 12th August, 1984, followed by circular Nos. 6817, dated 25th May, 1989, 13293, dated 5th October, 1991 and 2822, dated 27th April, 1995. For the dependants of the employees in the District cadre, District Level Compassionate Appointment Committee has been constituted whereas for the dependants of the employees in the State cadre. State Level Compassionate Appointment Committee has been constituted. Admittedly, the work-charged employees have no right to hold a post nor have any right to continue against such post till the date of superannuation. They are engaged either on daily wage or on temporary basis and they are appointed for execution of a specified work. Their services automatically come to an end on completion of the work of the sole purpose for which they are employed. In such a situation, if the work-charged employee has no right to continue in service till the date of superannuation, one can not claim right a dependant of a deceased work-charged employee for consideration of his case for appointment on the ground of compassion. In the case of Dilip Kumar Bhattacharya v. State of Bihar and others, reported in 2004 (4) PLJR 889, similar issue fell for consideration. A Division Bench of Patna High Court, having noticed the aforesaid circulars, issued by the State, held that the dependant of a deceased work-charged employee cannot claim appointment on compassionate ground.

Learned Advocated General submitted that the compassionate appointment being not a condition of service, a dependant of a deceased work-charged employee cannot claim benefit of compassionate appointment even in terms with the guidelines dated 4th February, 1949. But such submission cannot be accepted.

Appointment includes promotion. Admittedly, promotion falls within the purview of the term "condition of service" like other condition of service, such as, salary, wages, scale of pay, leave, confirmation, seniority, termination of service, retiral

benefits, including pension, gratuity leave encashment, provident fund apart from age of superannuation, disciplinary proceeding, deputation etc. In the case of State of Punjab Vs. Kailash Nath, the Supreme Court held-"expression "condition of service" means all those conditions, which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in the matters like pension etc.

The condition of service also includes the benefits, as may be provided by employer to a person even after his death to his dependant/heirs, such as, family pension, gratuity, leave encashment etc."

The compassionate appointment, thus, may not be a condition of service or a dependant of a deceased Government employee, who claims for such benefit but certainly with a condition of service of the employee, who know that the family in the cases of hardship, if he dies during the service career, will be taken care of by the employer by providing compassionate appointment to a dependant to enable the family of the deceased employee to tide over the sudden crisis.

Mere death of an employee does not entitle his family to claim such source of livelihood. Admittedly, work-charged employees have no right to continue in service of the State even till the age of superannuation. There is no guarantee of Job of a work- charged employee, as his job comes to an end on completion of work. In such a situation, a dependant cannot claim that the family of the employee will face economic ruination, the job having been suddenly taken away.

It has already been noticed that the State Government vide its Resolution No. 3/ PAR-03/51/88-5074, dated 20th September, 1990 decided to amend the P.W.D. Code and to stop appointment in the work-charged establishment. Under statutory Rule 1949 and as per Note-3 below Rule 59, the post borne in the work-charged establishment, which is required throughout the year or for a long and indefinite period, should be made permanent and included in the permanent establishment. In such a situation, if the post of work-charged establishment stands abolished by transferring the post in the permanent (regular) establishment and if there is prohibition of appointment in the work-charged establishment, the question of compassionate appointment of a dependant of deceased work-charged employee does not arise.

In the case of Regional Manger, A.P.S.R.T.C. v. M. Sampooramma, reported in 1999 SCC 1162, the Supreme Court having noticed the decision of the employer not to make any fresh appointment, such decision of the employer being bona fide, held that it would not be proper for the Court to question the same nor it will be proper to direct the employer to consider appointment of person on compassionate ground. Merely, because vacancy exists, it is not proper for the High Court to direct the respondents to consider the case for compassionate appointment, ignoring the ban on any fresh appointment.

In the circumstances there being a ban on the appointment in the work-charged establishment, made since 20th September, 1990, as the work-charged

establishment is temporary in nature, the dependant of a deceased work-charged employee has no right to claim compassionate appointment. The decision, given by the learned single Judge(s) in the case of Smt. Meera Devi (supra), Lali Sinha (supra) and Urmila Devi (supra), therefore, cannot be held to be a good law.

DEATH CUM-RETIRAL BENEFITS ETC.

The employees of work-charged establishment of the State of Bihar were initially entitled for contributory provident fund, in view of Government Orders, contained in P.W.D. Accounts Branch No. 3407-A, dated 27th April, 1942, reiterated vide Finance Department's Letter No. F 2-302/59-18977-F, dated 27th August, 1958. After the guidelines, contained in Letter No. 1344, dated 4th February, 1949 (now known as 1949 Rule), in view of the fact that the condition of service of work-charged employees was made identical to temporary Government servant, the Government vide Letter No. 3404, dated 24th May, 1958, allowed the existing members of the Contributory Provident Fund to continue but new membership to the Contributory (sic) Fund was stopped and work-charged employees were provided with the benefits under General Provident Fund Scheme, as was allowed to the temporary Government employees. A new head "General Provident Fund Work- charged Establishment" was opened in pursuance of Memo No. F-24028/70-8774-F, dated 2nd August, 1970. Reference taken from page 137 of Bihar P.W.D. Code. Malhotra Brothers, Patna, 5th Edition.

Under Rule 58 of Bihar P.W.D. Code the members of temporary establishments have no claim to pension, though they are allowed leave and leave salary under the Bihar Service Code. The Rules, as provided under the Bihar Service Code, 1952 (now Jharkhand Service Code, 2001), apply to all Government servants under* rule making control of the State Government. Under Rule 36 "Pensionable Service" means service, which qualifies the Government servants performing it to receive a pension from General revenue.

Under Rule 35, pension includes gratuity. Permanent post has been defined under Rule 38 which means a post, carrying definite rate of pay and sanction without limit of time whereas temporary post, as defined under Rule 48, means a post carrying definite rate of pay but sanctioned for limited time.

Admittedly, employees of the State are guided by the Bihar Pension Rules, 1950, which came into force from 20th January, 1950. The said Rule applies to all Government servants to whom the Rules of Bihar Service Code apply (see Rule 2 of Pension Rules, 1970). Under Rule 44 of Pension Rules, 1950 the Government may rule that the service on any class of Government servant does not qualify for pension. Under Rule 45 no claim to pension is admitted to a Government servant, appointed for a limited time or for a specified duty, on completion of which he is to be discharged. A person employed temporarily on monthly wages without specified limit of time or duty or to a person, who is merely paid for the work done, such as, Government Pleaders, Law Officers etc. can not claim pension.

The "conditions of qualification" for pension has been prescribed u/s II, Chapter IV of Bihar Pension Rules, 1950. Under Rule 58 three conditions have been stipulated to qualify for pension as quoted hereunder :

"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."

However, State Government has right to declare that any specified kind of service shall qualify for pension under Sub-rule (1) to Rule 59.

It has already been pointed out that the members of the temporary establishments have no claim for pension as per Rule 58 of the Bihar P.W.D. Code, but the State Government taking into consideration the fact that large number of temporary Government servants are employed under different schemes, which are in existence for 15-20 years and will cause hardship if they are not allowed pension after retirement, in exercise of power, conferred under Sub-rule (1) of Rule 59 of the Bihar Pension Rules, allowed the benefit of pension to temporary Government employees vide Memo No. Pen. 1024/69/11779-F, dated 12th August, 1969, as quoted hereunder :

Regarding.-Declaration of temporary service of a Government servant who is not confirmed as personable.

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 scheme which are in existence for the last 15-20 years and it will cause hardship to them. If they are not allowed 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 12th August, 1969. [Vide Memo No. Pen 1024-69-11779-F, dated 12.8.1969.]"

Learned Advocate General for the State and Mr. Srivastava, appearing on behalf of the Accountant General, opposed the prayer for payment of death-cum-retiral benefits to a work-charged employee or its dependant/heir(s), and relied on Rule 61 of Pension Rules, which stipulates that service does not qualify unless a Government servant holds substantively a post of permanent establishment. It

was also opposed on the ground that the servants of work-charged establishment are not paid from general revenue but it is charged direct to works. However, this submission cannot be accepted for the reasons, mentioned hereunder :

The work-charged employees are not guided by the Bihar Pension Rules, 1950 and thereby they cannot claim any benefit as per the said Rule. However, as the condition of service of the work-charged employees has been made similar to that of temporary Government employees, under Rule 1949, they have a right to claim and get such benefit to which a temporary Government employee is entitled.

It has already been pointed out that the State Government decided to provide the benefit of pension to the temporary government employees, employed under different schemes vide Memo No. Pen 1024/69/11779-F, dated 12th August, 1969. Such scheme having been framed by the State, the respondents can not deny similar benefits to the work-charged employees or on their death, to their dependants/heirs, their condition of service being similar to that of temporary employees.

Learned counsel for the Accountant General has relied on Rule 29, wherein, pensionable service has been defined as the service, which qualifies the Government servants, performing duty to receive a pension from general revenue. Reliance was also placed on Rule 19 of Bihar Service Code, which defines general revenue and includes all revenues and public money raised or received by the Central and State Government and excludes the revenues of local funds. Though such reliance has been made, it has not been made clear as to how the Rule debars a work-charged employee to receive pension, if otherwise provided under a scheme and they being entitled to have same and similar condition of service as of temporary Government employee.

It is not in dispute that apart from Bihar Pension Rules, 1950 separate schemes for grant of pension and gratuity have been framed by the State Government, including "Liberalized Pension Scheme", "Family Pension Scheme, 1964" etc. If the State Government has allowed the benefit of pension, which includes gratuity to a temporary State Govt. employee, in view of Rule 1949, the State Government cannot deny the said benefit to the work-charged employees or their heirs/dependants. I, therefore hold that the work-charged employees and after their death, their heirs/dependants are entitled for same death-cum-retiral benefits, to which a temporary Government employee is entitled, such as, pension, gratuity, leave encashment, provident fund etc., if otherwise found eligible and qualified for such benefits.

16. Thus, two of the issues, as raised above, namely, question relating to regularization of service/taking over the services of work-charged employees in the permanent (regular) establishment and payment of death-cum-retiral benefits are answered in favour of the petitioners but the issue, relating to compassionate appointment, is decided against them (petitioners).

17. I, therefore, hold that :

(i) The work-charged employees, who have completed more than five years of continuous service against one post in the work-charged establishment and otherwise eligible, have a right of consideration of their cases for taking over their services in the permanent (regular) establishment, irrespective of their dates of appointment.

But the work-charged employees, working on daily wages, not holding any post, are not so entitled.

(ii) The dependants of work-charged employees are not entitled to claim appointment on compassionate ground and entitled to claim appointment on compassionate ground; and

(iii) The work-charged employees working against a post, in regular scale of pay, on their retirement and after their death, their heirs/dependants are entitled to claim death-cum-retiral benefits, such as, pension/family pension, gratuity, leave encashment etc. apart from G.P.F. and Group Insurance amount, if otherwise fulfills the requisite qualifying period to earn pension, gratuity and leave encashment.

18. The writ petitions i.e. W.P. (S) No. 3854 of 2004, W.P. (S) No. 6471 of 2004, W.P. (S) No. 4360 of 2004 and W.P. (S) No. 4744 of 2004, relating to compassionate appointment, are accordingly dismissed.

19. So far as W.P. (S) No. 2166 of 2003, W.P. (S) No. 2210 of 2003, W.P. (S) No. 1750 of 2004, W.P. (S) No. 3254 of 2004, W.P. (S) No. 3588 of 2004. and W.P. (S) No. 6826 of 2004, relating to regularization of service/taking over the services of these work-charged employees in permanent (regular) establishment, are concerned, cases of these petitioners, are remitted to the competent authorities with a direction to decide the individual claim of each of the petitioners and communicate the decision within a period of four months from the date of receipt/production of a copy of this Judgment.

20. So far as the other writ petitions, namely, W.P. (S) No. 3963 of 2004, W.P. (S) No. 4264 of 2004, and W.P. (S) No. 6437 of 2004, relating to claim for payment of death-cum-retiral benefits, are concerned, they are also remitted to the respondents/ competent authorities with a direction to decide the individual claim of each of the petitioners. If any amount is found payable in favour of one or other petitioner(s) towards death-cum-retiral benefits, such as, pension/family pension, gratuity, leave encashment etc. the respondents will pay the admitted dues within a period of four months from the date of receipt/production of a copy of this judgment, failing which they will be liable to pay interest at the rate of 8% per annum from the date of retirement/death of the employee., On the other hand, if one or other authority disputes any claim of one or other petitioner(s), he will communicate the grounds to such petitioners. The writ petitions (both sets) are thus, allowed with the aforesaid observations and directions. However,

there will be no order as to costs.

M.Y. Eqbal, J.

21. I agree.

N.N. Tiwari, J.

22. I agree.