

**(2020) 01 JH CK 0182**

**In the Jharkhand High Court**

**Case No : Letter Patents Appeal No. 439 Of 2018**

State Of Jharkhand And Ors

APPELLANT

Vs

Sudhir Kumar And Ors

RESPONDENT

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**Date of Decision : 14-01-2020**

**Acts Referred:**

Jharkhand Pension Rules, 2000 — Rule 58, 59

**Citation : (2020) 01 JH CK 0182**

**Hon'ble Judges : Dr. Ravi Ranjan, CJ;Sujit Narayan Prasad, J**

**Bench : Divison Bench**

**Advocate : Ajit Kumar, Vikash Kumar, Sumeet Gadodia, Sudarshan Srivastava**

**Final Decision : Disposed Of**

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**Judgement**

Dr. Ravi Ranjan, CJ

I.A. No. 7301 of 2018

1. This application has been filed for condoning the delay of 497 days, which has occurred in preferring this appeal.

Heard the parties.

Having regard to the averments made in this application, we are of the view that the appellants were prevented by sufficient cause from preferring the appeal within the period of limitation.

Accordingly, I.A. No. 7301 of 2018 is allowed and delay of 497 days in preferring the appeal is condoned.

L.P.A. No. 439 of 2018

Heard learned Advocate General for the appellants-State, Mr. Sumeet Gadodia, learned Advocate for respondent no. 1 and Mr. Sudarshan

Srivastava, learned Advocate for respondent no. 2-Accountant General.

2. The main issue on which the order passed by the learned Single Judge is being assailed by the State of Jharkhand in this appeal is the application of Rule 58 and Rule 59 of the Jharkhand Pension Rules (hereinafter to be referred to as "the Rules") read with the order of the Government issued vide Memo No. Pen.1024/69/11779-F. dated 12.08.1969. The issue raised by the writ petitioner in the writ petition was that since the pensionary benefits have been sanctioned by the competent authority that would definitely mean that even though no specific order for confirming the services of the writ petitioner was passed, in view of the provisions contained in Rule 58 of the Rules, the services of the writ petitioner has to be considered to be confirmed. The learned Single Judge has held that since the necessary ingredients for grant of pensionary benefit are that the services must be under the Government and the employment must be substantive and permanent as also the services must be paid by the Government and therefore, that will make an employee or the concerned qualified for grant of pension if the aforesaid conditions are fulfilled. The learned Single Judge has further observed that since pension has been sanctioned that would definitely mean that the Government has considered the writ petitioner to be in service under Government on substantive and permanent post and, therefore, there is deemed confirmation of his services.

3. However, learned Advocate General has raised an issue that even if the services are not confirmed and the employee is still in temporary service and attains the age of superannuation, the State Government has power under Rule 59 of the Rules to declare as under:

"59. The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and

(2) are not fulfilled

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.

[Comments." See rule 6 of Liberalized Pension Rules (Appendx-5) and State Government decisions thereunder regarding counting of temporary service as qualifying service.]

State Government decisions.â?

1.

\*Regarding:â?" Declaration of temporary service of a Government servant who is not confirmed as pensionable.

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 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 12 August, 1969. [\*Vide Memo No. Pen 1024/69/11779 F., dated 12-8-1969.]

2.

See State Govt. decisions below Rule 60.

3.

See State Govt. decisions below paragraphs 5 and 6 of the Liberalized Pension Rules in Appendix-5.

4.

See State Govt. decision no. 2, 3, 4 and 5 below Rule 203 regarding counting of service of work charged staff brought over to regular establishment.â??

4. Apart from the above, it is also submitted that there is order/circular of the State Government bearing Pen.1024/69/11779-F dated 12.08.1969

according to which 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 Rules.

5. It is submitted that the learned Single Judge has not at all considered this aspect of the matter. However, at the same time, learned Advocate

General, on instruction, further submits that so far as the present writ petitioner is concerned, the Government is ready to consider his services as confirmed.

6. In such a situation, when this concession has already been given by the State, the writ petitioner's services has to be considered as substantive

and permanent and the issue which has been raised becomes academic one and is not required to be decided in the present case. However, it is made

clear that in the present case, since admittedly Rule 59 of the Rules has not been considered while deciding the aforesaid issue by the learned Single

Judge, the impugned decision would be confined to the case of the writ petitioner only and the issue will remain open to be decided in a given case.

7. With the aforesaid observations, the appeal stands disposed of.

I.A. No. 7302 of 2018

Consequent to final order passed in the appeal, this application also stands disposed of.