(2017) 04 PAT CK 0004

In the Patna High Court

Case No : 491 of 2014

Tarkeshwar Ram Son Of Late Buddha Ram APPELLANT

Vs

The State Of Bihar RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Citation : (2017) 04 PAT CK 0004

Hon'ble Judges : Ajay Kumar Tripathi, Nilu Agrawal

Bench : DIVISION BENCH

Advocate : Rajendra Kumar Jain

Judgement

1. For the reasons indicated in I. A. No. 2422 of 2014,

delay in filing of appeal is condoned.

2. Interlocutory Application is allowed.

3. Heard counsel for the appellant and the State.

4. This Court is not required to take note of things any

further than what the Learned Single Judge has taken note of while dismissing the writ application. The view expressed by the Learned Single Judge in dismissing the writ application is duly supported by a Full Bench decision of the Patna High Court in the case of State of Bihar vs. Bhagwan Singh, reported in 2014 (4) PLJR 229.

5. Learned counsel for the appellant tried to demonstrate

that earlier a Division Bench has granted relief in the case of State of Bihar vrs. Chandrika Rai and ors., which was L. P. A. No. 1343 of 1998 and the appeal against such decision was dismissed by the

Hon''ble Supreme Court.

6. With due respect to the learned counsel for the

appellant, the opinion of the Full Bench expressed in following

terms, occupies the field, which reads as under:

"11. Rule 56 of the Pension Rules provides that ''unless it be otherwise provided by special rule or contract, the service of every government servant qualifies from the date he takes the charge of the post to which he is first appointed''. Rule 58 thereof provides that the service of a Government servant does not qualify for pension unless it conforms to the following three conditions:- (i) The service must be under Government. (ii)The employment must be substantive and permanent. (iii) The service must be paid by Government. 12. Rule 61 thereof provides, ''service does not qualify unless the Government servant holds substantively a post on a permanent establishment''. Rule 45 thereof expressly excludes certain service for computation of pension. Clause (a) thereof reads, ''when a government servant is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged''. Clause (b) thereof reads, ''when a person

is employed temporarily on monthly wages without specified limit of time or duty''.

13. It is apparent that the above-referred provisions were not brought to the notice of the learned single Judge or before the Division Bench in the matter of State of Bihar & Ors. Vs. Chandrika Rai & Ors (Letters Patent Appeal No. 1343 of 1998).

14. Keeping in view the above provisions, we are of the opinion that the service rendered by the petitioner as daily wage Choukidar under the Executive Engineer, Tubewell Division, Gaya cannot be said to be a service for which the petitioner was paid from the general revenue of the State Government or the service rendered on a substantive post in a permanent establishment. Such service, although was followed by absorption on regular establishment, will not qualify for pension. Therefore, the service rendered by the petitioner, as daily wage employee from April 1973 to December 1978, was not a pensionable service or did not qualify for pension. On his retirement from service or his superannuation from service, he would be entitled to pension for the service rendered on a substantive post from 1st January 1979 till the date he retired from service.

15. It is not in dispute that the petitioner has indeed been paid pension for the service rendered by him from 1st January 1979 till July 2002 in the Work Charge Establishment, the petitioner is, therefore, not entitled to the relief claimed in the writ petition.

16. For the aforesaid reasons, Appeal is allowed. Impugned order dated 10th

February 2010 made by the learned single Judge in C.W.J.C. No. 7228 of 2005 is set aside. C. W. J. C. No. 7228 of 2005 is dismissed

17. The judgment in the matter of Chandrika Rai (supra) and any other judgment taking a similar view are expressly overruled. Emphasis supplied"

7. In view of the same, the decision of the Learned Single

Judge under challenge, dated 20th of April, 2012, does not require

any interference.

Appeal is dismissed.

