IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 136 of 2020

---

1. Surendra Nath Mahto, aged about 61 years, son of Late Harinath Mahto, resident of Village Edeldih, P.O. Janampiri, P.5. Tamar, District Ranchi,
2. Somwari Devi, Aged about:- 67 Years w/o Late Ghanshayam Mahto, R/o-Binsaidih, P.O.-Janampiri, P.S. Tamar, District-Ranchi.
3. Deonath Mahto, aged about 70 years, son of Late Dhirjo Mahto, resident of Village Chedeyadih, P.O. Janampiri, P.S. Tamar, District Ranchi.
4. Jaisingh Mahto, aged about 66 years, son of Late Dhirja Mahto, resident of Village Chedeyadih, P.O. Janampiri, P.S. Tamar, District Ranchi.
5. Krishna Mahto, aged about 79 years, son of Late Giriya Mahto, resident of Village Dobhadih, P.O. Barenda, P.S. Tamar, District Ranchi.
6. Prahlad Mahto, aged about 79 years, son of Late Lahru Mahto, resident of Village Salukdih, P.O. Situ, P.S. Ichagarh, District Seraikella-Kharsawan.
7. Shankar Mahto, aged about 73 years, son of Late Gurucharan Mahto, resident of Village Salukdih, P.O. Situ, P.S. Ichagarh, District Seralkella-Kharsawan.
8. Hari Mahto, aged about 69 years, son of Late Karam Singh Mahto, resident of Village Serengdih, P.O. Chokahatu, P.S. Sonahatu, District Ranchi.
9. Munsi Babu, aged abcut 69 years, son of Late Madhav Singh Munda, resident of Village Bandhdih, P.O. Chokahatu, P.S. Sonahatu, District Ranchi.
10. Ghasu Mahto, aged about 75 years, son of Late Karam Mahto, resident of Village Darmada, P.O. Salgadih, P.S. Tamar, District Ranchi
11. Mohim Mahto, aged about 69 years, son of Late Vijay Mahto, resident of Village Jethadih, P.O. Amlesha, P.S. Tamar, District Ranchi
12. Madhav Mahto, aged about 63 years, son of Mohan Mahto, resident of Village Domadih, P.O. Edramhatu, P.S, Sonahatu, District Ranchi,
13. Parsuram Mahto, aged about 67 years, son of Late Abhimanyu Mahto, resident of Village Badia, P.O. Baredih, P.S. Tamar, District Ranchi.
14. Gunjaram Mahto, aged about 77 years, son of Late Ranjit Mahto, resident of Village Jojopiridih, P.O. Landupdih, P.S. Sonahatu, District Ranchi.
15. Janbi Devi, Aged about 59 years W/O Late Bhushan Singh Munda, R/O-Village-Jamdih, Ulilohar, P.O.-Baredih, P.S.-Tamar, District-Ranchi
16. Nirola Devi, Aged about 74, W/O Late Jituram Mahto, R/O-Village of VTC, Bansiya, P.O.-Bansiya, P.S. Silli, Dist.: Ranchi
17. Muchiram Mahto, aged about 71 years, son of Late Sohrai Mahto, resident of Village Dubla, P.O. Salnadih, P.S.

Tamar, District Ranchi

18. Umacharan Mahto, aged about 68 years, son of Late Manmohan Mahto, resident of Village Sarmali, P.O. Janumpiri, P.S. Tamar, District Ranchi

...Petitioners.

Versus

1. The State of Jharkhand.
2. The Secretary, Water Resources Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jaganathpur, District Ranchi.
3. The Deputy Commissioner, Ranchi, P.O. GPO, P.S. Kotwali, District Ranchi.
4. The Deputy Collector, Revenue Division (Canal), Irrigation Department, Doranda, P.O. and P.S. Doranda, District Ranchi.

...Respondents.

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner(s): Mr. Saurabh Shekhar, Advocate
For the Respondents: Mr. Kishore Kumar Singh, S.C.-V

C.A.V. ON 18.06.2025 **PRONOUNCED ON 30/07/2025**

The instant writ application has been preferred by the Petitioners for a direction upon the respondents to consider the Petitioners' eligibility for pensionary benefits and to grant them pension, w.e.f. the date of superannuation, in view of the submissions that the petitioners have discharged regular temporary services with the respondents, and in view of the provisions of Pension Rules.

2. The brief facts of the case lie in a narrow compass. The Petitioners were appointed on different vacant and sanctioned posts under the Respondent-Department and thereafter were placed in the Revenue Division, Ranchi, on posts like Periodical Rent Collector, Clerk and Amin, in the 1980s. The Petitioners were appointed *vide* different office orders issued from the office of Revenue Division, Ranchi, wherein it has been specified that they were granted specific scale and dearness allowance.

Thereafter, the services of the Petitioners have been extended regularly and they rendered continuous services with the Respondent-Authorities. The Petitioners after retirement had preferred representations before the respondent authorities to consider their case for entitlement of pension, but all in vain.

The Petitioners who rendered more than 30 years of services were neither regularized and, on that count, nor their services for pensionary benefits were considered. Hence, this writ application.

3. During the pendency of the present writ petition, the following petitioners expired: Ghanshyam Mahto (Petitioner No. 2), Bhushan Singh Munda (Petitioner No. 15) and Jituram Mahto (Petitioner No. 16). They have been substituted by their legal representatives, namely Somwari Devi (as Petitioner No. 2), Janbi Devi (as Petitioner No. 15) and Nirola Devi (as Petitioner No. 16) respectively and the matter now proceeds at their instance.

4. Ld. Counsel for the Petitioners submitted that the Petitioners were appointed on temporary basis but continuously worked till retirement and they were paid salary from the regular Establishment Head and not from any contingency or scheme-based budget. The services of the Petitioners were extended from time to time without any break, and thus, they ought to be given pensionary benefits.

Learned counsel has placed reliance upon a certificate issued by the Respondent no.4, i.e., the Deputy Collector, Revenue Division (Canal), Ranchi, dated 16.07.2024 (Annexure-5), which clearly acknowledges that the Petitioners have served continuously for over 15 years. It was pointed out that this certificate has neither been withdrawn nor challenged by the Respondents and, therefore, must be treated as a binding admission on the part of the State.

Further, learned counsel has placed reliance on Rule 59 of the Bihar Pension Rules (as adopted by the State of Jharkhand), read with Memo No. 11779 F., dated 12.08.1969, and Memo No. 401 F., dated 13.01.1975, to assert that temporary employees, who have rendered more than 15 years of continuous service are eligible for pension and gratuity benefits.

This Court vide order on 03.07.2023 called the petitioners to submit any document that will show that they had been continuously working for the respondents.

Thereafter, the Petitioners filed a Supplementary Affidavit dated 21.11.2024, annexing a letter dated 16.07.2024 (Annexure-5) issued by the Deputy Collector, Revenue Division (Canal), Irrigation Department, Doranda, Ranchi, i.e., respondent no.4, certifying that the Petitioners had worked continuously for more than twenty years on a temporary basis under the respondent department.

Relying upon aforesaid submissions, Ld. Counsel reiterated the prayer for grant of pensionary benefits.

5. Ld. Counsel for the Respondents submitted that the Petitioners were appointed as temporary employees and their services were not regularized at any point of time. It was contended that since the Petitioners continued to serve on a temporary basis, their services do not qualify under the statutory pension rules and hence, they are not entitled to any pensionary benefits.

Ld. Counsel further submitted that the Petitioners were essentially seasonal employees engaged on need-basis in the Revenue Division, and their service conditions did not confer upon them any vested right to claim pension or gratuity. The Respondents took the stand that mere continuation in service, without formal regularization, cannot create any enforceable right in favour of the petitioners.

Further, he submitted that the services rendered by the Petitioners were not in a regular capacity and that they were not appointed through a competitive or formal recruitment process as per applicable rules.

6. Having heard learned counsel for the parties and after perusal of the records, the material aspects that emerge are that the Petitioners were appointed on various sanctioned vacant posts under the Respondent-Department in the 1980s and were placed in the Revenue Division, Ranchi, on positions such as Periodical Rent Collector, Clerk and Amin. The appointment orders, issued by the office of Revenue Division, Ranchi, provided specific pay scales and dearness allowance, clearly reflecting that appointments were made against vacant and sanctioned posts. Though some office orders described the appointments as "temporary," the services of the petitioners were continuously extended and they rendered uninterrupted service until their superannuation.

It is well settled that in service jurisprudence, particularly in cases of Class-IV employees or temporary appointees, the records pertaining to appointments, salary slips, attendance registers, etc., are in the custody of the employer. It is not expected from such employees to retain decades-old service records. Under such circumstances, once the petitioners have made a positive assertion regarding continuity of service, the burden shifts on the employer to rebut the same by producing records, which they have failed to do in the present case.

This legal position is reinforced by the judgment of the Hon'ble Supreme Court in ***Govt. of Gujarat (Fisheries***

***Terminal Dept.) v. Bhikubhai Meghajibhai Chavda*[1]**, wherein at paragraph 17 it was held:

> "***17.*** *Applying the principles laid down in the above case by this Court, the evidence produced by the appellant has not been consistent. The appellant claims that the respondent did not work for 240 days. The respondent was a workman hired on a daily-wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls, etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.*"
>
> *(emphasis supplied)*

7. The case of the Petitioners in the present matter is on a better footing because they have been able to corroborate their pleadings and averments with production of a document that has been issued by the respondent no.4 himself, who is the contesting party. Under such circumstances, where the question is about the proof of continuity of services and the petitioners/employees have made positive statement that they were continuously working, the onus was upon the respondents to produce the document to show that they were not, if they had to successfully dispute such a statement.

8. The question that now arises is, *"whether the petitioners, being temporary employees who served continuously for more than 30 years, are entitled to pensionary benefits under the applicable rules?"*

With regard to this question, it would be profitable to refer to Rule 59 of the Bihar Pension Rules (adopted by the State of Jharkhand) which lays down the enabling provisions for treating temporary services as pensionable in certain circumstances. The relevant portion of Rule 59 is being extracted hereinbelow:

> "***59.*** *The Provincial Government...*
>
> *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*

[1] (2010) 1 SCC 47

> *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...]"*

9. The above-mentioned Rule 59 has been further supplemented by the decision of the Govt. published vide memo no.11779-E, dated 12.08.1969, wherein, it has been stated that those employees who have been working for more than fifteen (15) years and were taken in temporary engagement, will be entitled to the benefits of pension. This has been declared, by the State Govt. utilizing its power under Rule 59 of the Jharkhand Pension Rules.

It is significant to note that no counter affidavit was filed by the respondents disputing the contents of the Supplementary Affidavit or the authenticity of Annexure-5 which acknowledges more than 15 years of continuous service. On the contrary, the said respondent no.4 is the same authority who had sworn the counter affidavit dated 15.09.2020, wherein it was stated that the Petitioners were seasonal employees and hence were not entitled to continuity in service.

The contradiction between the earlier stand taken by the respondents in the affidavit and the subsequently issued certificate by the same officer, clearly raises serious questions on the stand of the respondents.

10. Further, in respect of Survey and Settlement employees, Rule 73 of the Pension Rules stipulates that such service will not count for pension unless it is followed by qualifying service. Rule 73 is quoted as hereunder:-

> *"**73.** Service in the Survey and Settlement Departments does not count unless it is followed, without interruption, by qualifying service.*
>
> ***Note.** Deputy Collectors and similar gazetted Government servants when not specially employed for temporary work, are not affected*

by this rule as they count service independently of the particular department to which they happen for the time to be attached.

State Government decisions:-

1.

***विषय** – बिहार पेंशन नियमावली के नियम *73* के अन्तर्गत सर्वे एंड सेटलमेंट कर्मचारियों की अस्थायी सेवा को पेंशन प्रदायी घोषित करने के सम्बन्ध में।

सर्वे एंड सेटलमेंट के कर्मचारी *15* वर्षों से अधिक सेवा करने के पश्चात् अस्थायी रूप में सेवानिवृत्त हो जाते हैं, परन्तु बिहार पेंशन नियमावली के नियम *73* के वर्तमान उपबन्धों के अनुसार उन्हें पेंशन/ग्रेच्युटी की सुविधा नहीं मिलती है। फलस्वरूप, जीवन के अंतिम अवधि में कर्मचारियों को काफी आर्थिक संकट का सामना करना पड़ता है।

२. सावधानीपूर्वक विचार करने के पश्चात् सरकार ने यह निर्णय लिया है कि सर्वे एंड सेटलमेंट के जो अस्थायी कर्मचारी *15* वर्षों से अधिक सेवा की अवधि के पश्चात् सेवानिवृत्त हो जाते हैं, तो वित्त विभाग के परिपत्र संख्या पेन-*1024/69-11779* वि० दिनांक *12-08-1969* के अनुसार पेंशन/ग्रेच्युटी के हकदार होंगे, बशर्ते कि वे निम्नांकित शर्तों को पूरा करते हों*:*

(i) उनकी नियुक्ति सरकार द्वारा समय-समय पर स्वीकृत पद पर हुई हो और सेवा नियमित एवं लगातार हो।
(ii) सेवानिवृत्ति के समय तक उनके वेतन का भुगतान नियमित स्थापना वेतन विपत्र के द्वारा किया गया हो।
उनकी सेवा आकस्मिक एवं मौसमी *(Casual and Seasonal)* नहीं हो।

३. यह आदेश *01-01-1973* से प्रभावकारी होगा। सर्वे एंड सेटलमेंट कार्यालय के जो अस्थायी कर्मचारी *01-01-1973* या उसके बाद की तिथि को *15* वर्ष से अधिक अवधि को लगातार एवं नियमित सेवा करने के उपरान्त निवृत्त हैं या होंगे, उपरोक्त सुविधा प्राप्त होगी।

४. सम्बन्धित नियम का संशोधन बाद में किया जाएगा। *[*Vide F.D. Memo No. P.C.-11-46/74-401 F. dated 13.01.1975.]...***”**

11. At this point, it is relevant to examine whether the nature of petitioners' employment could be categorized as “casual” and “seasonal” as claimed by the respondents. In this regard, authoritative legal definitions are instructive.

According to Black’s Law Dictionary, *“casual employment”* is defined as:

> *“Work that is occasional, irregular, or for a short time – often associated with day labor.”*[2]

Similarly, *“seasonal employment”* refers to:

> *“An occupation possible only during limited parts of the year, such as summer-camp counselor, a baseball-park vendor,or a shopping-mall Santa.”*[3]

Applying the above definitions to the present case, this Court finds that the employment of petitioners

[2] *Black’s Law Dictionary*, 12th edn., p. 663 – definition of “Casual Employment”.
[3] *Black’s Law Dictionary*, 12th edn., p. 663 – definition of “Seasonal Employment”.

was neither casual nor seasonal. Rather, they were continuously posted in sanctioned posts and were paid from the regular establishment head. Their service tenure, spanning more than 15 years, contradicts the very essence of “casual” or “seasonal” work.

Therefore, the nature of their service cannot be equated with either casual or seasonal employment and must be treated as long-term continuous engagement, qualifying for consideration under Rule 59 of the Bihar Pension Rules, 1950.

12. Moreover, to ascertain whether the petitioners satisfy the requirement of having rendered more than 15 years of continuous service, an essential criterion for eligibility under Rule 59 of the Bihar Pension Rules, 1950 read with Memo No. Pen 1024/69/11779 F. dated 12.08.1969, a comparative chart of their service durations is noted below. The same is based on the service records issued by the Respondent No. 4 *vide* Memo No. 208 dated 16.07.2024, annexed to the Supplementary Affidavit on behalf of the petitioners (Annexure 5):

क्र.सं.	कर्मचारी का नाम	पदनाम	कार्यकाल
1	श्री शंकर महतो	सा० संग्राहक	1969 से 2005
2	श्री माधव महतो	सा० संग्राहक	1978 से 2014
3	श्री परशुराम महतो	सा० संग्राहक	1982 से 2005
4	श्री हरि महतो	सा० संग्राहक	1971 से 2005
5	श्री मुंशी बाबू	सा० संग्राहक	1981 से 2005
6	श्री उमाचरण महतो	सा० संग्राहक	1973 से 2005
7	स्व० भूषण सिंह मुंडा	सा० संग्राहक	1969 से 2005
8	श्री देवनाथ महतो	सा० मुहर्रिर	1982 से 2005
9	श्री मोहिम महतो	सा० संग्राहक	1969 से 2005
10	श्री प्रहलाद महतो	सा० अमीन	1970 से 2005
11	श्री घासु महतो	सा० संग्राहक	1972 से 2005
12	श्री मुचीराम महतो	सा० संग्राहक	1972 से 2005
13	श्री जयसिंह महतो	सा० मुहर्रिर	1981 से 2005
14	स्व० जितु महतो	सा० संग्राहक	1969 से 2005
15	श्री कृष्णा महतो	सा० अमीन	1969 से 2005
16	स्व० धनश्याम महतो	सा० मुहर्रिर	1969 से 2005
17	श्री सुरेन्द्रनाथ महतो	सा० मुहर्रिर	1982 से 2014

A perusal of the above chart clearly demonstrates that each of the petitioners has completed well beyond 15 years of continuous service on sanctioned posts without break and their salaries were paid from the regular establishment head. The continuity and regularity of service stand admitted through the certificate issued by respondent no.4 and are not controverted by any documentary material on behalf of the respondents.

13. In view of the above discussion, this Court finds that though the respondents have taken reference of Rule 73 in their Counter Affidavit and they have stated that the employment of the petitioners was seasonal, they were not able to substantiate this position; rather the petitioners have been able to prove that they were working continuously. The petitioners were engaged on temporary basis and they were paid salary and there is continuity.

Consequently, this Court finds that the petitioners are entitled to the benefit of Rule 59 of the Jharkhand Pension Rules, read with Government Resolutions dated 12.08.1969 and 13.01.1975.

14. Accordingly, the present writ petition is allowed. The respondents are directed to consider the services of the petitioners as qualifying for pension and to extend all consequential pensionary benefits, including arrears of pension and gratuity, to the petitioners, within a period of four months from the date of receipt/production of a copy of this judgment.

(Deepak Roshan, J.)

Jk
A.F.R