

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7413 of 2017

1. Bablu Kumar Mahtha S/o Late Mahabir Mahta, Resident of Village - Gang, P.O. - Bhandarisa, P.S. - Manigachhi, Dist - Darbhanga - 847422.
2. Md. Noor Alam S/o Late S.K. Samiruddin, Resident of Village - Bartari, P.O. - Sitalmani, P.S. - Ajamnagar, Dist - Katihar - 854102.
3. Manoj Kumar S/o Vijay Kant Lal Karn, Resident of Avanda Tank, Bakarganj, Lahera Sarai, Dist - Darbhanga.
4. Arbind Prasad S/o Sri Baleshwar Yadav, Resident of Village - Manasara, P.O. Lagma, P.S. Ghanshyampur, Dist - Darbhanga 847427.
5. Bhola Roy S/o Late Jamun Roy, Resident of Village - Bejhadih, P.O. Lagunia Raghu Kanth, P.S. - Samastipur, Dist - Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna-800001 (Bihar)
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The District Magistrate, Darbhanga.
6. The District Provident Fund Officer, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar, Adv.
For the Respondent/s : Mr.Anil Kumar, A.C. to SC-8

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 02-03-2021

The present writ petition has been filed seeking the following reliefs:-

I. For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondents to grant seniority and to extend the benefit of Old pension scheme and Government



Provident Fund instead of Contributory Pension scheme and Contributory Provident Fund to the petitioners and also the benefit in the pension with effect from the date of recommendation by Bihar Public Service Commission (hereinafter referred to as “B.P.S.C.” only).

II. For holding that the petitioners having been appointed pursuant to the recommendation of B.P.S.C., is entitled for the same benefits as extended to other recommended candidates including grant of Old Pension Scheme and Contributory Provident Fund as well as seniority and the resolution dated 31.08.05 issued by the department of Finance, Patna, Bihar cannot be made applicable with respect to the petitioners.

2. The facts, which are not in dispute, are that an advertisement bearing Advertisement No. 12 of 1998 was published on 26.01.1998 in the daily newspaper “Aaj” by the B.P.S.C., inviting applications from eligible candidates for appearing in the first Regional Competitive Examination, 1998 for appointment on Class-III posts in the Regional Offices, at the district level. The petitioners had also applied in pursuance to the aforesaid advertisement for their appointment on the post of Assistant/ Accountant, where-after they had appeared in the P.T. examination and had cleared the same. The petitioners are



stated to have then appeared in the Mains examination, which was held on 27.07.2002 and 28.07.2002 and are stated to have performed well in the said examination. The B.P.S.C. had then recommended the names of the successful candidates including that of the petitioners herein for appointment, vide letter dated 15.01.2003 where-after the District Magistrate, Darbhanga vide letter dated 07.04.2005 had called the petitioners for counseling and verification of documents on 15.04.2005.

3. The petitioners along with other candidates had appeared before the District Magistrate, Darbhanga for counseling and verification of the document on 16.04.2005, where-after their documents were verified, however, the District Magistrate, Darbhanga had made appointments of only five candidates, whose marks were less than that of the petitioners herein in the merit list, leading to the petitioners filing various writ petitions, bearing CWJC No.16483 of 2004, CWJC No. 16180 of 2004, CWJC No. 414 of 2005, CWJC No. 9554 of 2005, CWJC No. 456 of 2005, CWJC No. 10623 of 2005, CWJC No. 165 of 2005 and CWJC No. 798 of 2005 resulting in the petitioners being appointed vide order dated 31.12.2007 issued by the Collector, Darbhanga.

4. The learned counsel for the petitioners has



submitted that the new contributory Pension Scheme 2005 is being thrust upon the petitioners instead of the old pension scheme and the representations made by the petitioners before the District Magistrate, Darbhanga on various occasions has yielded no result. It is submitted that the petitioners have been appointed in pursuance to the advertisement published in the daily newspaper "Aaj" on 26.01.1998 vide Advertisement No. 12 of 1998, where-after the BPSC had recommended the name of the petitioners along with other candidates on 15.01.2003, however, the candidates having lower marks in the merit list, as compared to the petitioners, have been appointed vide order dated 30.06.2005 i.e. prior to coming into force the new contributory scheme, which has been made applicable to the employees appointed on or after 1.9.2005. It is submitted that the petitioners were left out without any rhyme or reason at the time when the candidates lower in the merit list were appointed vide order dated 30.06.2005, hence the petitioners cannot be penalized by being deprived of the benefits under the old pension scheme on account of the laches of the State Respondents especially in view of the fact that old vacancies have to be governed by the old rules and moreover, a right to receive pension is a condition of service, thus would be



governed by the terms and conditions of the advertisement and the existing rules inasmuch as such candidates would acquire right to be considered for selection and appointment in accordance with the then existing rules.

5. The learned counsel for the petitioners further submits that the issue raised in the present writ petition is no longer res integra inasmuch as identical issue has been decided by a co- ordinate Bench of this Court vide order dated 3.4.2017 passed in CWJC No. 16468 of 2016 (Chandra Kant Kumar & Ors. Vs. The State of Bihar & Ors.) which has also stood approved by the Hon'ble Apex Court vide order dated 6.1.2020 passed in SLP (Civil) No. 35714 of 2016 (The State of Bihar & Ors. Vs. Ganpati Singh).

6. This aspect of the matter has also been considered by a co- ordinate Bench of this Court in a judgment dated 03.08.2011 passed in CWJC No. 10901 of 2006 (Md. Kayumuddin Ansari & Ors. vs. The State of Bihar & Ors.), relevant paragraphs whereof are reproduced herein below:-

“In that view of the matter, this Court would find it difficult to accept the submission of the learned counsel for the State who has given only one explanation by way of justification of the Government decision that the petitioners being appointee after 1.9.2005 were to be governed by the new contributory pension scheme. Such submission of learned counsel for the State is



based on an arithmetical calculation that since the appointment letter of the petitioners was issued after cutoff date of 1.9.2005 they will be automatically deprived from availing the earlier benefit of pension under Bihar Pension Rules which was given to the appointees of the year 2003. This Court however would fail to understand the logic of such submission, inasmuch as when the petitioners were subjected to same selection process in terms of the same advertisement and ultimately their case was recommended by the Commission in continuation of the same merit list by placing them above a person who was originally recommended and appointed, it would be difficult to accept such justification given by the State Government that the petitioners still will be deprived of the benefit of the old pension scheme because they were appointed after 1.9.2005. It was not the fault of the petitioners that the Commission and/or the Government did not follow its own policy of following its decision regarding lower qualifying marks for the candidates belonging to backward category and therefore, if the Government and the Commission had to be directed by this Court in the case filed by the similarly situated persons for drawing a fresh merit list, and in such merit list the name of the petitioners had figured above someone who was originally recommended, they cannot be deprived of the benefit which has been given to the originally recommended candidates.

It is in fact this aspect of the matter which would clinch the issue in favour of the petitioners inasmuch as it is well settled by now that old vacancies have to be governed by the old rules and the new Rules coming into force after beginning of process of selection as per old Rules cannot be made applicable. Reference in this connection may be usefully made to the judgment of Apex Court in the case of P. Mahendran Vs. State of Karnataka reported in (1990) 1 SCC 411. Moreover a right



to receive pension is condition of service as has been held by the Apex Court in the case of Union of India Vs. Gurnam Singh reported in (1982) 2 SCC 314 and thus to be governed in accordance with the terms and condition of the advertisement and the existing Rules inasmuch he acquires a right to be considered for selection and appointment in accordance with the then existing Rules. This Court would accordingly hold that the petitioners being appointees of the old transaction of Advertisement No. 2 of 2000 in continuation with old appointees of 2003 will be entitled to get the benefit of old pension scheme and they will not be governed by the new Contributory Pension Fund Scheme coming into force w.e.f. 1.9.2005. It has to be also kept in mind that even the original appointment letter issued on 26.11.2005 to the petitioners, did not contain any clause and/or condition that they will be governed by the new Contributory Pension Fund Scheme and therefore, the resolution of the Finance Department, contained in Annexure 10 dated 1.9.2005, cannot be made applicable in the case of the petitioners as it was not made part of their service condition also in their appointment letter. For all these reasons, this application is allowed and the respondents are directed to give benefit of old pension scheme under Bihar Pension Rules to the petitioners as was extended to other 41 Drug Inspectors appointed out of the same advertisement and transaction.”

7. The issue under consideration has also been dealt with by a co- ordinate Bench of this Court, in its judgment dated 11.02.2016 passed in CWJC No. 20654 of 2010 (Raj Narayan & Ors. v. The State of Bihar & Ors.) as also in a judgment dated 03.04.2018 rendered by a co- ordinate Bench of



this Court in CWJC No. 13797 of 2016 (Pramod Kumar & Ors. v. The State of Bihar & Ors.).

8. The learned counsel for the respondent- State, Shri Anil Kumar, AC to SC-8 has not disputed the position as is existing in law and has submitted that the present case is squarely covered by the judgments rendered in the cases of Chandra Kant Kumar & Ors. (supra), Ganpati Singh (supra), Md. Kayumuddin Ansari (supra), Raj Narayan (supra) and Pramod Kumar (supra).

9. Having regard to the facts and circumstances of the case, the present writ petition stands allowed and it is held that the petitioners would be entitled to the benefits of the old pension scheme.

10. It goes without saying that the petitioners would also be entitled to the notional benefits of continuity fixation of pay, seniority etc. w.e.f. the date on which others from the merit list in question were appointed, though they were lower to the petitioners in the merit list, however, subject to verification of the actual facts by the District Magistrate, Darbhanga. The said exercise shall be completed by the District Magistrate, Darbhanga within a period of six weeks from the date of receipt/ production of a copy of this order and an



appropriate order in that regard shall be passed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.03.2021
Transmission Date	N/A

