

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1487 of 2015

=====

Ratish Kumar Jha Son of Sri Visheshwar Jha, resident of Mohalla- Ayachi Nagar Benta, Police Station- Lahariya Sarai, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of General Administrative, Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The District Magistrate, Darbhanga
6. The District Magistrate, Madhubani.
7. The District Provident Fund, Officer, Darbhanga.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh
Mr. Umesh Kumar

For the Respondent/s : Miss Prakirtita Sharma, AC to SC-25

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 14-02-2017

Heard Sri Bindhyachal Singh, learned counsel assisted by

Sri Umesh Kumar, learned counsel for the petitioner and Miss

Prakirtita Sharma, learned A.C. to Standing Counsel – 25.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for following reliefs:-

- (i) **For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing of the order as contained in memo no. 172 dated 24.01.2014 issued by the District Magistrate, Darbhanga pursuant to the order dated 28.03.2012 passed in C.W.J.C. No. 4211 of 2012, whereby the claim of the petitioner has been rejected.**



- (ii) **For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondents to grant of 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 petitioner and also the benefit in the panel w.e.f. the date of recommendation by the Bihar Public Service Commission (hereinafter referred to as “BPSC” only).**
- (iii) **For holding that the petitioner having been appointed pursuant to the recommendation of BPSC, is entitled for the same benefits as extended to other recommendees 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, Bihar, Patna cannot be made applicable with respect to the petitioner.**

3. Short fact of the case is that pursuant to advertisement published in the year 1998 in respect of Regional Competitive Examination for appointment on Class III post, which was to be conducted by the Bihar Public Service Commission (hereinafter referred to as the ‘BPSC’), the petitioner applied and he participated in preliminary test. The result was published on 16-02-2002, thereafter, he participated in main examination, which was held on 27-07-2002 and finally, the result was published on 16-09-2002. After the publication of result, on 15-01-2003 the BPSC made recommendation in respect of appointment to the post of Assistant. According to petitioner, his name was at serial no. 17 of the said list



of recommendation. However, due to one reason or the other, the appointment of the petitioner was delayed and finally, he was appointed on 09-12-2005.

4. It has been argued that number of persons, who were below the petitioner in the list of recommendation, were already appointed on or before 16-05-2005. However, before the appointment of the petitioner, by Government Resolution dated 31-08-2005, New Contributory Pension Scheme was introduced and as such, keeping in view the fact that petitioner was appointed on 09-12-2005, the petitioner was refrained from getting benefit of old pension scheme and GPF scheme and as such, the petitioner had earlier approached this Court by filing a writ petition, vide C.W.J.C. No. 4211 of 2012, which was disposed of on 28-03-2012 by a Bench of this Court, with a direction to respondents to consider the grievance of the petitioner with following directions:-

“The respondents are directed to consider the grievance of the petitioner in light of the present discussion and in case they opine him the relief of the old pension scheme, they are required to pass a reasoned and speaking order disclosing all relevant materials considered on the basis of which they arrive at the conclusion so that if necessary, judicial review shall be facilitated.”

Thereafter, the impugned order has been issued by the District Magistrate, Darbhanga.

5. Learned counsel for the petitioner submits that once as



per the same advertisement i.e. 1998 advertisement and same recommendation, some persons, who were appointed prior to introduction of the new scheme, are being granted the benefit of old pension scheme, there was no reason to create two class in the same appointment process. Sri Bindhyachal Singh, learned counsel for the petitioner has placed heavy reliance on a Single Bench judgment of this Court passed in **C.W.J.C. No. 663 of 2010 (Ganpati Singh vs. State of Bihar & Ors.)**, as contained in **Annexure - 7**, which was allowed on 29-08-2011. He submits that in the said writ petition also, the writ petitioner had applied pursuant to advertisement published in the year 1998, but that was for the post of Junior Engineer. In the said case, appointment was delayed and finally, the writ petitioner was appointed after the introduction of the New Pension Scheme. This Court, considering the fact that recommendation was made earlier relying on a judgment of the Apex Court reported in **(2008) 7 S.C.C. 728 (Balwant Singh Narwal & Ors. Vs. State of Haryana & Ors.)**, had quashed the order of rejection of claim. The said writ petitioner had filed the writ petition for grant of benefit of old pension scheme as well as grant of seniority. The said order was assailed by the State before the Division Bench by way of filing an appeal, vide L.P.A. No. 204 of 2014, however; the Division Bench approved the Single Bench judgment and directed that the writ petitioner was to be treated at par



with other selected candidates pursuant to Advertisement No. 99/1998, including the seniority as well as in the matter of entitlement of Pension Scheme. The order of Division Bench dated 29-02-2016 passed in L.P.A. No. 204 of 2014 has been brought on record as **Annexure – 16** to the rejoinder filed on 7th February, 2017 by the petitioner. Learned counsel for the petitioner has further placed reliance on a Government Resolution, contained in Memo No. 680 dated 05-10-2015. He submits that in respect to other persons, in view of order passed by the writ court, same benefit has been given. The Government Notification has been brought on record as **Annexure-15 series**, particularly running page 102 and 103. On aforesaid ground, a prayer is being made to grant relief, which has been sought for, in the present writ petition.

6. Learned State counsel has vehemently opposed the prayer of the petitioner. It was submitted by learned counsel for the State that since the petitioner was appointed on 09-12-2005 and before his appointment, new pension scheme was already implemented i.e. on 01-09-2005, there was no reason to extend the benefit of old scheme to the petitioner. Learned counsel for the State has also placed reliance on a judgment of the Apex Court, reported in **2010 (2) S.C.C. 637 (Rakhi Rai & Ors. –Vs. – The High Court of Delhi & Ors.)**. She submits that merely on the ground that name of



petitioner was included in the list of recommendation, that does not create any indefeasible right to the petitioner, however she was not in a position to distinguish the case of the petitioner with other similarly situated persons, who were recommended by the BPSC by the same recommendation.

7. Besides hearing learned counsel for the parties, I have also examined the materials on record. Fact remains that petitioner's case stands exactly on similar footing as of the case of Ganpati Singh (*supra*) i.e. order dated 29-08-2011 passed in C.W.JC. No. 663 of 2010 (**Annexure 7** to the writ petition). The said order has also been approved by the Division Bench by an order dated 29-02-2016 in L.P.A. No. 204 of 2014 (**Annexure – 16** to the rejoinder). Since the issue raised in the present writ petition has already been set at rest, there is no reason to pass a different order.

8. Accordingly, in the light of order passed by the Single Bench in C.W.J.C. No. 663 of 2010 and approved by the Division Bench in L.P.A. No. 204 of 2014, the writ petition is allowed, with a direction to grant the benefit of Old Pension Scheme and Government Provident Fund Scheme in the case of petitioner, though, he was appointed after the introduction of New Pension Scheme. He will be guided by the old scheme.

9. The impugned order i.e. Memo No. 172 dated



24.01.2014 passed by the District Magistrate, Darbhanga (Annexure – 12 to the writ petition) is hereby set aside.

10. The writ petition is allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.02.2017
Transmission Date	N/A

