

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2046 of 2014

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1. Amrendra Kumar Srivastava Son of Late Ram Bilash Prasad Resident of Village Manikchawk, P.S. Distt. Sitamarhi
2. Ram Bilash Choudhary Son Of Late Miso Choudhary Resident Of Village Kanhaiyachak, P.S. Parbatta, Distt. Khagaria
3. Suresh Prasad Poddar Son Of Hari Prasad Poddar Resident Of Village Narayanpur, P.S. Narayanpur, Distt. Bhagalpur
4. Kailash Prasad Yadav Son Of Late Chukti Prasad Yadav Resident Of Village Narayanpur, P.S. Narayanpur, Distt. Bhagalpur
5. Dinesh Thakur Son Of Sri Chunchun Thakur Resident Of Village Mathurapur, P.S. Khagaria, Distt. Khagaria
6. Koshi Mehta @ Koshi Son Of Bando Mehta Resident Of Village Narayanpur, P.S. Narayanpur, Distt. Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar, Through Principal Secretary Water Resources Department, Bihar, Patna
2. Principal Secretary, Water Resources Department, Bihar, Patna
3. Principal Secretary, Finance Department, Bihar, Patna
4. Chief Engineer, Water Resources Department Samastipur
5. District Magistrate, Khagaria
6. Superintending Engineer, Flood Control Circle, Khagaria
7. Executive Engineer, Flood Control Division No. 1, Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MANOJ KUMAR SINGH
For the Respondent/s : Mr. AC to GA 6

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 06-10-2017

Heard both sides.

The petitioners have filed this writ petition for a direction to the respondents to allow them pension and other retrial benefits under old scheme, prior to resolution of Finance Department No. 1966 dated 31.08.2005.

The learned counsel for the petitioners submits that petitioners were appointed on daily wages in the year 1979. The petitioners filed CWJC No. 5370 of 1988 for their regularization and this court vide order dated 07.01.1998 directed the respondents to take immediate steps to fill up all the class-III and



class-IV posts on regular basis, which are vacant in different offices of the Irrigation Department, in accordance with law, after giving weightage to the petitioners and other daily wages employees appointed prior to 01.08.1985 within a period of six months from the date of receipt/ production of a copy of the judgement but the authorities did not consider the case of the petitioners for their regularization. Thereafter, the petitioners filed M.J.C. No. 2893 of 1998 which was disposed of vide order dated 20.04.2005. The respondents regularized the services of the petitioners on 14.12.2011. Two of the petitioners have already retired and, in view of 10 years qualifying service for pension under old pension scheme, they could not get pension and other retirement benefits. The learned counsel for the petitioners further submits that in a similar matter in which process of appointment was initiated in the year 1998 but the appointment was made in the year 2007, this court in CWJC No.3911 of 2010 (*Birendra Prasad & Ors. v. the State of Bihar & Ors.*) directed the respondents to grant benefit under old pension scheme to the petitioners even though they were appointed after cut off date, i.e. 31.08.2005, of old pension scheme. It is further submitted that petitioners were working on daily wages since 1979 and after regularization in permanent service they would hardly complete 10 years of service entitling them to get pension and other retirement benefits under old scheme.

On the other hand, the learned counsel for the State submits that the petitioners were regularized on 14.12.2011 on permanent basis and, therefore, New Pension Scheme shall be applicable in the case of petitioners and the petitioners shall be entitled to get benefits under New Pension Scheme. It is further submitted that the single bench judgement of this court passed in the case of *Birendra Prasad & Ors. v. the State of Bihar & Ors* (supra) was set aside in L.P.A. No. 1695 of 2011 (*The State of Bihar v. Birendra Prasad & Ors.*) and the



division bench of this court has clearly held that process of appointment does not confer any right to an employee to get pension under old scheme when the employee was appointed after commencement of new scheme.

Having heard the submissions of both sides, I am of the view that the petitioners are not entitled to get pension from old pension scheme. The petitioners were appointed on daily wages and they filed writ petition for their regularization in the year 1988. This court directed the respondents to fill up the vacancies of class-III and class-IV posts in the Irrigation Department within six months after giving weightage to the daily wages employees but the services of the petitioners were not regularized till the commencement of New Pension Scheme in the year 2005. The petitioners were regularized only on 14.12.2011. Therefore, I do not find any good ground for directing the respondents to grant the petitioners pension under old scheme. This writ petition is, accordingly, dismissed.

However, the petitioners may file representation before the authorities to grant them relaxation in the qualifying service according to Rule 59 of the Bihar Pension Rules and if such a representation is filed the same shall be disposed of within a period of six months from the date of its filing.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.10.2017
Transmission Date	N.A.

