

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12149 of 2010

- =====
1. Sunil Kumar 'Maurya', son of Late Nathuni Prasad, resident of Village Akauna, P.O. Sherghati, P.S. Amas, District - Gaya
 2. Satish Kumar Singh, son of Sri Bhubneshwar Singh, resident of village Hathsarganj, Hajipur P.S. Town, District -Vaishali

.... Petitioners

Versus

1. The State of Bihar
2. The Secretary, Department of Home (Special), Bihar, Patna
3. The Additional Secretary, Home-cum-Inspector General (Prison), Bihar, Patna
4. The Additional Secretary, Department of Home (Special), Bihar, Patna

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Sanjay Parasmani, Advocate

For the Respondents : Mr. Chandra Shekhar Singh, AC to GA 10

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-10-2017

Heard learned senior counsel for the petitioners as well as learned counsel for the respondents.

2. The present writ petition has been filed for a direction to the respondents to grant seniority to the petitioners as per the recommendation made by the Bihar Public Service Commission (for short, "the Commission") pursuant to which persons junior to them were appointed in August, 2004 and to grant all benefits as in the case of their juniors, such as benefits of old pension scheme and salary at par with juniors with effect from August, 2004, along with arrears.

3. The short facts of the case, according to the petitioners, are that pursuant to Advertisement No. 21/99 issued by



the Commission for appointment on 28 posts of Assistant Jailors under Home Department, to which 20 more vacancies were subsequently added thus bringing the total number of 48 posts, the petitioners along with other persons applied and after passing the requisite preliminary and main examinations, the petitioners and others were recommended by the Commission vide letter no. 36 dated 03.07.2002 for appointment to 43 posts of Assistant Jailors in accordance with the respective position of the candidates in the merit list. Thereafter in view of the new reservation policy, the revised recommendation was sent to the State Government by letter 25.08.2003 with respect to only 29 candidates including the petitioners. Owing to inaction on the part of the respondents, the petitioners approached this Court which, by its order dated 30.06.2004 in CWJC Nos. 10006 and 14515 of 2003, directed the respondents to consider the cases of the petitioners pursuant to the recommendation of the Commission dated 23.06.2003. The revised recommendation was then sent for 28 persons by letter dated 15.07.2004 but some controversy arose with regard to the recommendation considering the minimum height prescribed in the advertisement. The appointment of some persons was made by the Additional Home Commissioner-cum-I.G. Prison, Bihar vide Memo No. 3977 dated 09.08.2004 but, however, the names of the petitioners were not included in such appointments while the persons junior to the petitioners in the panel recommended by the Commission came to



be appointed. The petitioners once again approached this Court and they were finally appointed vide Memo No. 6179 dated 19.12.2008 issued under the signature of the Inspector General, Prison, Bihar, Patna. The petitioners accordingly claimed all the rights and benefits in accordance with their position in the merit list recommended by the Commission and as made available to the persons junior to the petitioners, who had been appointed in August, 2004 prior to the appointment of the petitioners in December, 2008, including the benefit of old Pension Scheme which was in operation in 2005.

4. Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the petitioners, submits that the petitioners were wrongly denied appointment at the initial stage and were eligible to be appointed in August, 2004 itself along with the persons junior in the merit list recommended by the Commission and no fault could be laid at their door for the delay in their appointments. It is submitted that the petitioners are entitled for all the rights and benefits from August, 2004 itself. Reliance is placed on the judgment of a coordinate Bench this Court dated 11.02.2016 passed in CWJC No. 20654 of 2010 (Raj Narayan & Ors. Vs. The State of Bihar & Ors).

5. Learned counsel for the respondents appears and opposes the writ petition, submitting that the petitioners had joined their service in December, 2008 and accordingly, they would be governed by the resolution of the Finance Department as contained in



Memo No. 1964 dated 31.08.2005 in view of which the petitioners could avail of the Bihar Government Employee Contributory Pension Scheme, 2005 and not under the old Pension Scheme. It is further submitted that the petitioners would be entitled to rights and benefits only from the date of their joining in December, 2008 in accordance with the opinion obtained by the General Administration Department, Bihar to the effect that the employees who have joined within one year of the first joining then their seniority would be decided on the basis of the merit list of the Commission but when the employees had joined in different years then the merit list will be decided on the basis of their joining for the same year. It is submitted that seniority list of the Assistant Jailors was accordingly prepared and published vide Memo No. 1758 dated 11.04.2017 in which the petitioners' date of joining has been shown as '23.12.2008' but never objected to by the petitioners.

6. Having heard learned counsel for the parties and on careful consideration of the materials available on record, this Court finds considerable merit in the writ petition. It is not in dispute that the delay in appointment of the petitioners was not attributable to any fault on their part. The persons junior to the petitioners had been appointed in August, 2004 but the petitioners were not appointed even though they stood above such persons in the merit list recommended by the Commission and came to be appointed only subsequently in December, 2008.



7. In similar circumstances, this Court in Raj Narayan's case (supra) has observed as follows --

"Admittedly, the petitioners were recommended by the Bihar Public Service Commission but the persons much mellow (sic below) them, were given appointment in the year 2002 but they were left out. The State has given some reason for that such as the documents etc. could not be verified properly, however, in view of the direction of this Court passed in M.J.C. No. 2828/1998, their cases were considered and after proper verification of their documents they were also appointed.

Thus, in my view, since admittedly, for their seniority the merit list recommended by the Bihar Public Service Commission has to be considered and for achieving that their appointment would have to be treated from the date on which juniors in the concerned list recommended by the Bihar Public Service Commission were appointed. The date would be 19.02.2002 for the post of T.B. Attendants and 27.02.2002 for the post of 4th grade. Thus, the petitioners salary would have also to be fixed after granting notional benefit treating the aforesaid date as their date of appointment on their respective posts. However, they would not be entitled for back wages for the aforesaid period. While granting all other benefits, the aforesaid period would have to be calculated notionally but the petitioners would be entitled for all kinds of monetary benefit from their actual date of appointment, i.e., 26.11.2005. Since their juniors were appointed in the year 2002 and they would be governed by the old pension scheme, the petitioners would also be



entitled for the pensionary benefits under old pension scheme itself in view of the fact that on date of advertisement old scheme was in force and, as already held, their date of appointment would be considered to be the date on which their juniors were appointed. Otherwise the things would lead to anomalous situation.

Accordingly, this writ application stands allowed."

8. There appears little justification in the submission of the respondents that when the employees have joined within one year of the first joining then their seniority would be decided on the basis of the merit list of the Commission but when the employees had joined in different years then the merit list would be decided on the basis of their joining in the relevant year. No rational basis has been shown for the cut-off period of one year aforesaid.

9. This Court sees no reason to take a different view of the matter than the one in *Raj Narayan's case* (supra).

10. The writ petition is accordingly allowed in line with and on the same terms as CWJC No. 20654 of 2010 (*Raj Narayan & Ors. Vs. The State of Bihar & Ors*).

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.10.2017



Transmission Date	N.A.
----------------------	------

