

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.319 of 2018

- =====
1. The Union Of India through the Chief Post Master General, Bihar Circle, Patna.
 2. The Post Master General, Northern Region, Muzaffarpur.
 3. The Senior Superintendent of Post Offices, Muzaffarpur Division, Muzaffarpur.

.... Petitioner/s

Versus

1. Shambhu Mishra, son of Late Ram Shreshath Mishra, resident of Village- Chakmooran, P.O. Sharfuddinpur, P.S. Bochaha, District- Muzaffarpur.
2. Bindeshwar Sah, son of Late Siya Ram Sah, resident of Village- Nazirpur, Via Ramna, District- Muzaffarpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Addl. S.G.
Mrs. Kanak Verma, adv.
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-01-2018

Heard learned Additional Solicitor General for the Union of India assisted by Mrs. Kanak Verma, Central Government counsel.

Writ has been filed by the Union of India on behalf of the Postal Department since the Central Administrative Tribunal, Patna Bench Patna while dealing with O.A. 421 of 2016 vide its order dated 02.05.2017 allowed the O.A. and directed the Postal Department to treat the private-respondents under the Old Pension Scheme on the basis of the temporary status granted to them prior to 01.01.2004.



There are two aspects which are of significance. (1) That the temporary status was granted to the private respondents on 01.09.1993 and the New Pension Scheme came into effect from 01.01.2004.

The other matter of significance is that in an identical matter earlier dealt with by a Division Bench in C.W.J.C. No. 17204 of 2015 decided on 15.12.2015, the Division Bench did not find any infirmity with the decision of the Tribunal allowing benefit of Old Pension Scheme to a casual employee who acquired temporary status prior to 01.01.2004.

The Division Bench had this to say:

“3. The dispute is whether a casual employee in the Postal Services, who had acquired the temporary status much prior to 01.01.2004 and was made permanent thereafter, would be covered by the Old Pension Scheme or the New Pension Scheme.

4. The Tribunal, noticing the Full Bench judgment as well as the judgment of the Karnataka High Court in this regard in favour of the employees, held that they would be covered by the Old Pension Scheme. To us, the problem is simple. The New Pension Scheme would apply to persons coming in Government Service after 01.01.2004. The applicants before the Tribunal were first casual labourers, but



with effect from 1989 they acquired the temporary status or the status of a temporary employee of the Government in the Department of Posts. After three years of such continuous service, they were entitled to certain benefits, which a permanent Group-D employee gets. They were receiving the same, pending confirmation in service as a permanent employee. Towards pensionary benefits, G.P.F. deductions were made. Then came cut-off date as 01.01.2004. In the meantime, the vacancies having occurred in the year 2011, they were substantially appointed as permanent employees. They were regularized as permanent employees. To us, the answerer would be evident from the fact that they were already in service prior to 01.01.2004, though in a temporary status. To us, it appears that the meaning of the Scheme, which puts the cut-off date as 01.01.2004 is that all those persons, who have come in service after 01.01.2004 would be covered by the New Pension Scheme. As noted and stated above, the applicants before the Tribunal, the respondents herein, were already in service, though in temporary status prior to the cut-off date. To them, this cut-off date would not apply, and consequently they would be deemed to be in service on 01.01.2004 having been confirmed as permanent employees in Group-D with effect



from 2011. Thus, we find no error in the judgment and order of the Tribunal.”

The above observation of the Division Bench has been reproduced as part of this order because we are totally in agreement with the view expressed therein. Therefore, the decision of the Tribunal does not warrant to be interfered with. Writ application of the Union of India must fail.

Writ is dismissed.

The direction issued by the Tribunal must be carried out and implemented forthwith preferably within a period of two months.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Devendra/Arjun

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.01.2018
Transmission Date	NA

