

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14039 of 2014

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1. Rakesh Kumar S/o Sri Surajdeo Kumar R/o Ashiyana Nagar, Nav Vikas Colony, P.S. Shastri Nagar, H.No. 31, District - Patna 25
 2. Uttam Kumar Singh S/o Shri Suresh Pd. Singh R/o vill. - Sargarha, P.O. Kukhi, P.S. Haidernagar, Distt. - Palamu (Jharkhand)
 3. Abhay Shankar Samar S/o Late Ramashray Prasad R/o village - Sargarha, P.O. Kukhi, P.S. Haidernagar, District - Palamu (Jharkhand)
 4. Ajay Shakar Lorik S/o Late Ramashray Prasad R/o Moh. - Indrapuri (Bazidpur), P.O. & P.S. Barh, Distt. - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Commissioner, Finance, Govt. of Bihar, Patna
3. The Commissioner - Cum - Secretary, Health Services, Department of Health, Govt. of Bihar, Patna
4. The Joint Commissioner, Accounts Administration, Department of Finance, Contributory Provident Fund, Bihar, Patna
5. The Additional Secretary, Health and Family Welfare, Department, Vikash Bhawan, Patna
6. The State Drugs Controller, Directorate Health Services Vikash Bhawan, Patna
7. The Bihar Public Service Commission, Bihar, Patna, through its Secretary

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr Mithilesh Kumar Rai, Advocate
For the S t a t e	: Mr Harish Kumar, GP VIII with Mr Binod Kumar Sinha, AC to GP VIII
For the B P S C	: Mr Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 08-05-2018

Heard the learned counsel for the petitioners, respondent-
State as well as the Bihar Public Service Commission.

2 The short issue which arises for consideration in the instant case is whether old vacancies, in respect of which Advertisement No 2 of 2000 was issued, are to be governed by the old Rules or the new Rules which have come into force after beginning of



the process of selection initiated under Advertisement No 2 of 2000.

3 The short facts which gave rise to the instant writ petition are that Advertisement No 2 of 2000 was issued for appointment of Drug Inspectors. The petitioners had applied in response to the same. The selection of the petitioners was delayed on account of non-recognition of the training certificate of petitioners No 1 and 2 which they had submitted in support of their candidature. In respect of petitioners No 3 and 4, the delay had occasioned because the result of their viva voce test was shown to be “unfit”. This Court on the writ petition filed by petitioners No 1 and 2 in *CWJC No 2034 of 2005* and *CWJC No 10062 of 2005* respectively had held that the petitioners were duly qualified and eligible and, as such, their candidature was entitled to be considered for appointment. In respect of petitioners No 3 and 4 also, this Court, under order dated 12.09.2005 passed in *CWJC No 853 of 2002* and *CWJC No 3620 of 2002*, had directed the respondents to consider the case of the petitioners and allow them to appear in the separate interview/viva voce test while noticing the fact that the result published in respect of their candidature showing them as “unfit” was not proper.

4 Accordingly, petitioners No 1 and 2 were issued appointment letters on 20.08.2010 and 08.01.2007 respectively. In respect of petitioners No 3 and 4, the appointment letters were issued on 15.12.2006. Thus, their appointment letters were issued belatedly



after 01.09.2005 for which the respondents were liable as the petitioners were wrongly denied consideration of their candidature. It was only after this Court in the writ proceedings, noticed above, had passed the orders in their favour that appointment letters were issued to the petitioners. It may also be noticed that in case of the instant petitioners also, there was no stipulation in their belated appointment letters that they were to be governed by the new Contributory Pension Fund Scheme.

5 Since the old Pension Rules were finally done away with effect from 01.09.2005, the petitioners are sought to be denied the benefit of pension under the old Rules. In respect of the same appointment process arising out of Advertisement No 2 of 2000, this Court, in the case of *Md Kayumuddin Ansari & Others –Versus- State of Bihar & Others*, has, by order dated 03.08.2011 passed in *CWJC No 10901 of 2006* decided the issue with respect to the same recruitment process. In that case also, under similar circumstance, the appointment letters of the petitioners came to be issued after 01.09.2005. this Court has considered the issue in the said judgment as follows:

“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 the 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 conditions of the advertisement and the existing Rules inasmuch as 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 not be governed by the new Contributory Pension Fund Scheme coming into force wef 01.09.2005. 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 01.09.2005, 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.”

6 Since the issue stands decided and the petitioners' case is squarely covered by the law laid down in the case of *Md Kayumuddin Ansari & Others (supra)*, this Court would direct the



authorities to extend similar benefits to the petitioners of this case also as has been extended to the petitioners of *CWJC No 10901 of 2006*.

7 The writ petition stands allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2018
Transmission Date	NA

