

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11843 of 2014

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1. NEELAM KUMARI DAUGHTER OF LATE KAMLAKANT SINGH RESIDENT OF VILLAGE- BRAHIMPUR, P.O.- BRAHIMPUR, P.S.- MASHRAK, DISTRICT- SARAN (BIHAR). (ASSISTANT TEACHER, RAJENDRA COLLEGIATE SCHOOL, CHAPRA).
 2. SANJAY KUMAR SON OF JAY MANGAL CHAUDHARY RESIDENT OF VILLAGE- RAHUA, P.O. & P.S. JANDAHA, DISTRICT- VAISHALI (BIHAR). (ASSISTANT TEACHER, HIGH SCHOOL, MAHNAR)
 3. AYODHYA PRASAD VERMA SON OF RAMESHWAR PRASAD VERMA RESIDENT OF VILLAGE- NAWAGADH, P.O. KANHAIYAGANJ, P.S.- TELHARA, DISTRICT- NALANDA (BIHAR). (ASSISTANT TEACHER, HIGH SCHOOL, BENAR, NALANDA)

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY, GOVERNMENT OF BIHAR, PATNA
2. THE PRINCIPAL SECRETARY, EDUCATION DEPARTMENT, GOVERNMENT OF BIHAR, PATNA
3. THE DIRECTOR (SECONDARY) EDUCATION, GOVERNMENT OF BIHAR, PATNA
4. THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATIVE DEPARTMENT, GOVERNMENT OF BIHAR, PATNA

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raj Narayan Mishra
For the Respondent/s : Mr. Sc25- Arvind Ujjwal

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 14-09-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

2. The present application has been filed by the petitioner for a direction to the respondents to include them in the Pension Scheme, which was available prior to 01.01.2005. Earlier Pension Scheme was available on superannuation of the employee,



but with effect from 01.01.2005 amendment has been made in the Pension Rules and new scheme was introduced which does not permit grant of pension by Government.

3. Dr. Maya Nand Jha learned counsel for the petitioner in the present application submitted that the appointment of the petitioner in the instant case was made pursuant to the advertisement No. 2 of 1991. In fact on the basis of the said advertisement appointments have been made on 18.12.1996 and 11.02.1997 on the recommendation of the Vidyalaya Sewa Board but no action was taken by the respondent to consider the case of handicapped category and corrective measures have been taken by the respondent belatedly after the order of the writ court which was taken to the LPA Court and up to the Supreme Court. After loosing the case upto Supreme Court, respondents have appointed the petitioner but in the meanwhile new pension scheme was introduced with effect from 01.01.2005. Now respondents are including the petitioner under the new scheme of Pension 2005 on the ground that appointment of the petitioner was made in the year 2006. Referring to Annexure-5 Dr. Jha submits that in the case advertisement No. 5 of 1988 respondents have taken decision to include the appointees of advertisement No. 5 of 1988 and as such petitioner deserve similar treatment. From Annexure-5 it appears



that the decision was confined to the appointees of advertisement No. 5 of 1988 and it was not to be treated as precedent.

4. Notwithstanding, Annexure-5 was confined to the appointment made pursuant to advertisement No. 5 of 1988 it admits the legal and factual position that a persons appointed belatedly on account of lapse of respondent is entitled to grant of benefit of pension irrespective of the appointment was made subsequent to come inforce the new pension scheme of 2005.

5. This writ petition has been filed on 14.07.2014 after service of two advance copies to the office of the Advocate General. Even after lapse of four years no counter affidavit has been filed on behalf of the respondent.

6. Under the aforesaid circumstance, the Court is constrained to decide the writ application on the basis of material available on the record. On consideration of the argument advanced by the parties there is no dispute that the advertisement was made in 1991 and out of the said advertisement No. 2 of 1991 large number of the Assistant Teachers were appointed. The delay in the appointment of the petitioner is attributed to the misconstruction of the fact and law by the respondent. After coming inforce right to equal opportunity to the disabled, horizontal reservation is available to physically challenged people



and it was obligation of the respondent to workout the scheme to grant horizontal reservation to the physically challenge people. Since respondents have failed in their duty and on account of their failure the matter was taken to the High Court, The Writ Court, LPA Court and ultimately the Supreme Court decided in favour of the petitioner and thereafter the respondents have appointed the petitioner and as such the Court is of the considered view that there is no lapses on the part of the petitioner but respondents are responsible for delay and taking advantage of their own illegal stand, causing delay in appointment cannot be a ground to deny the benefit of old pension scheme, which was available to the teachers appointed out of same advertisement No. 2 of 1991. The law in this regard has been lucidly explained by the Chief Justice Chagla of the Bombay High Court in the case of *All India Groundnut Syndicate Ltd, vs. Commer. of Income Tax, Bombay City. reported in AIR 1954 (232)* it was held that the basic principles of law that are cannot take advantage of own wrong. Relevant portion of the judgment is quoted below:-

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the



assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the Income-tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

7. In view of the admitted factual aspect that the appointment of the petitioner was made pursuant to the advertisement No. 2 of 1991 and there was delay on the part of the respondent in making appointment of the petitioner and the fact that appointee of the same advertisement and selection process cannot be subjected to different scheme. The Court is of the considered view that the respondents are oblige to extend the



same treatment to the petitioner live their counterpart appointed Assistant Teacher out of the same advertisement and selection process.

8. Accordingly the writ petition is allowed, respondents are directed to include the petitioner in the pension scheme available prior to 01.01.2005. Necessary and corrective measures may be taken by the respondent within a maximum period of four months from the date of receipt/production of a copy of this order.

9. With the aforesaid, this application is allowed and disposed of.

(Anil Kumar Upadhyay, J)

banti/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2018
Transmission Date	

