

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13797 of 2016

- =====
1. Pramod Kumar, son of Sri Shiv Nath Prasad, resident of village Majhiyaw, P.S. Belaon, District Kaimur (Bhabhua)
 2. Shashi Bhushan Dwivedi, son of Sri Ramakant Dwivedi, resident of village Rudrawar Khurd, P.S. Belaon, District Kaimur (Bhabhua)
 3. Harendra Prasad, son of Sri Mahabir Prasad, resident of village Rooppur, P.S. Bhabua, District Kaimur (Bhabhua)
 4. Anil Kumar Singh, son of Sri Ishwar Dayal Singh, resident of village Mokari, P.S. Bhabua, District Kaimur (Bhabhua)
 5. Santosh Kumar, son of Sri Hajari Singh, resident of Ward No.6, Bhabua, P.S. Bhabua, District Kaimur (Bhabhua)
 6. Chandra Bhan Singh, son of Sri Jay Prakash Singh, resident of village Dadar, P.S. Mohania, District Kaimur (Bhabhua)
 7. Sheshmuni Singh, son of Sri Kanta Singh, resident of village Ishiya, P.S. Bhabua, District Kaimur (Bhabhua)
 8. Amardeo Prasad, son of Sri Ram Krit Prasad, resident of village Denwa, P.S. Bhabua, District Kaimur (Bhabhua)
 9. Sita Ram, son of Sri Bhushan Ram, resident of village Akolhi, P.S. Nuon, District Kaimur (Bhabhua)
 10. Mehdi Hasan, son of late Nabi Mian, resident of Ward No.13, Bhabua, P.S. Bhabua, District Kaimur (Bhabhua)
 11. Rama Shankar Ram, son of Sri Shiv Chand Ram, resident of village Amaon, P.S. Chainpur, District Kaimur (Bhabhua)
 12. Md. Arif Hussain, son of Md. Faiyazul Hussain, resident of village Junayatpur, P.O. Digha, P.S. Danapur, District Patna
 13. Md. Aftab Ali, son of Kashim Ali, resident of village Pajraon, P.S. Nuon, District Kaimur (Bhabhua)

.... Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Old Secretariat, Patna
3. The Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Patna
4. The Chief Director, Department of Health Services, Bihar, Patna
5. The Commissioner, Patna Division Patna (Bihar)
6. The District Magistrate, Kaimur (Bhabhua)
7. The Civil Surgeon cum Chief Medical Officer, Kaimur (Bhabua)
8. The District Provident Fund Officer (Rohtas cum Kaimur), Sasaram (Rohtas)

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Yogendra Kumar, Adv.
Dr. M.K.Gautam, Adv.

For the Respondent/s : Mr. Aditya Nath Jha, AC to SC-18

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-04-2018



Heard Mr. Yogendra Kumar, learned counsel for the petitioners and Mr. Aditya Nath Jha, learned AC to SC-18, for the State.

The 13 petitioners herein pray for a direction in the nature of mandamus commanding the respondents to accept joining of the petitioners from the date on which the other candidates placed below the petitioners were permitted to give their joining, from the consolidated merit list, a copy of which has been enclosed at Annexure 2 to the writ petition and is dated 16.1.2003. The petitioners alongside pray for notional benefit of continuous service as well as seniority and also for providing them the benefit of old pension scheme which was withdrawn with effect from 1.9.2005.

The facts leading to the writ petition briefly stated is that the Bihar Public Service Commission (hereinafter referred to as the 'BPSC') issued Advertisement No. 1/1998 to 56/1998 inviting application for appointment against Class III post in the District Collectorate as well as Muffasil offices across the State. A copy of the advertisement which was issued on 26.1.1998 is enclosed at Annexure 1 to the writ petition. The 13 petitioners fulfilling the eligibility qualification for appointment on a Class III post submitted their respective application. A merit list of 66 candidates was published as against 68 posts against different categories for the district of Kaimur



on 16.1.2003, a copy of which is placed at Annexure 2 to the writ petition. The name of these 13 petitioners appeared at serial nos. 12, 5, 18, 19, 20, 22, 23, 39, 55, 59, 60, 61 and 62 respectively. It is following the recommendation at Annexure 2 that the Addl. Collector, Kaimur at Bhabhua vide his letter dated 6.9.2003, a copy of which is at Annexure 3, directed the petitioners to deposit their original certificates, the details of which are mentioned in the letter enclosed at Annexure 3. It is in compliance of the direction that the petitioners deposited their certificates. It is from this stage that the arbitrariness in the action of the respondents initiated when appointment orders were issued from the recommended list of 66 candidates at Annexure 2 but without maintaining the seniority rather in arbitrary manner.

Vide appointment order bearing Memo No. 546 and 550 dated 2.6.2004 at Annexures 4 and 4/A the appointment letter was offered to the persons at serial no.21, namely, Pramod Singh and at serial no. 29, namely, Satyendra Kumar though incorrectly mentioned in the writ petition as Shailendra Kumar, Sl.No.55. Some of the petitioners, who ranked senior to these persons, were ignored. The appointments of the petitioners did come albeit after considerable delay and lapse of four years. In so far as the petitioners no. 1, 2 and 8 are concerned, they were appointed vide letter dated 25.6.2008 at Annexure 6 while rest of the petitioners were appointed vide letter



dated 30.6.2008 at Annexure 7. According to these petitioners, not only they have been discriminated in payment of salary from the rest who were appointed in the year 2004, rather they have also been deprived of the benefits under the old pension scheme which was withdrawn with effect from 1.9.2005 when the new scheme comprising of Contributory Provident Fund was introduced. It is feeling aggrieved that these petitioners are before this Court.

Mr. Yogendra Kumar, learned counsel for the petitioners, placing reliance on the judgment of this Court on the issue so raised rendered in the case of **Md. Kayumuddin Ansari & ors. v. the State of Bihar & ors.** arising from C.W.J.C.No. 10901/2006 at Annexure 8 and C.W.J.C.No. 20654/2010 (**Raj Narayan & ors. v. the State of Bihar & ors.**) at Annexure 9, has submitted that a delayed issuance of appointment order cannot take away vested right of the petitioners as it existed on the date of advertisement nor the respondents can have different yardstick for the appointees from the same transaction. He submits that this very issue came up for consideration in the two judgments referred to above and the relief so prayed was granted to the said petitioners. He prays for similar relief.

The argument of Mr. Yogendra Kumar has been resisted by Mr. Jha, who makes reference to the letter of the District Magistrate, Kaimur at Bhabhua at Annexure R-5(1) of the counter affidavit to



submit that it is for want of vacancies that the appointment was delayed.

I have heard learned counsel for the parties and have perused the records.

The facts noted above are not in dispute. It is not in dispute that these appointments have taken place pursuant to the advertisement issued in the year 1998 when the old pension scheme was in force. The recommendation of the 'BPSC' at Annexure 2 as contained in the letter dated 16.1.2003 again is not in dispute. It is also not a matter of dispute that the persons in the said list, who were appointed in 2004, were kept in the old pension scheme while a delayed appointment of the petitioners has deprived them of this benefit as also of the salary so paid to those appointed in the year 2004 as complained by the petitioners. The claim is resisted by the respondents on issue of want of vacancy but even while resisting the claim it is not disputed that it is from the same transaction initiated in the year 1998 vide Annexure 1 and the recommendation at Annexure 2 of the year 2003 that while some were appointed in the year 2004 and have derived benefit of old pension scheme, the petitioners have been deprived because their appointment letter was issued in the year 2008. The two judgments relied upon by Mr. Kumar, learned counsel for the petitioner, is conclusive on the issue as raised herein and I am



persuaded to reproduce the opinion so expressed by the Co-ordinate Bench in the case of **Md. Kayumuddin Ansari** (supra) which puts at rest all issues so raised by the petitioners and resisted by the State:

“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 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 condition 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 will not be governed by the new Contributory Pension Fund Scheme coming into force w.e.f. 1.9.2005. 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 1.9.2005, 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.”

Another Co-ordinate Bench considering similar grievance, while taking note of the opinion expressed in the case of **Md. Kayumuddin Ansari** (supra) as well as of a Division Bench judgment rendered in the case of **the State of Bihar & ors. v. Manjeet Kumar**, arising from L.P.A.No. 326/2009, has upheld the claim of the petitioners of deemed appointment with effect from the date persons below in the list were given such appointment. The legal position as to the rights of the parties in a selection process does not require any detailed discussion for it is well settled that the Rules of Game so set out through an advertisement cannot be changed by passage of time or by a delayed appointment, the reasons be whatsoever. It is unacceptable that simply because the appointments



were given to these petitioners after the pension scheme was withdrawn with effect from 1.9.2005 that while others from the list at Annexure 2 are deriving the benefit of old pension scheme, it deprives the petitioners. This action of the respondents strikes at the very root of the protection guaranteed under Article 14 of the Constitution of India and cannot be upheld.

In result, the writ petition is allowed and the petitioners herein are held entitled to notional benefits of continuity, fixation of pay, seniority etc. with effect from the date on which others from the list at Annexure 2 were appointed i.e. 2.6.2004 vide orders as contained in Annexures 4 series and would also be entitled to the benefit of old pension scheme.

Let a writ of mandamus issue accordingly.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.04.2018
Transmission Date	NA

