

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.469 of 2014

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1. Sanjeev Nayan Son Of Sri Mahendra Narayan Resident Of Shail Sadar, Ward No.23, Bhirki Tola (South), Mission Road, P.S.- Madhepura, District-Madhepura, U.P. At Present Residing At Assistant Engineer, Civil in Nalkup Pramandal, Bihar Sharif, Nalanda
 2. Kumar Mukesh Son Of Ramdeo Prasad Resident Of Pachambha House, New Area, P.S.- Nawada District- Nawada, Bihar

.... Petitioners

Versus

1. The State Of Bihar, Through The Chief Secretary, Old Secretariat, Patna
2. Finance Commissioner-Cum-Principal Secretary, Finance Department, Old Secretariat, Patna
3. Principal Secretary, Personnel & Administrative Department, Old Secretariat, Patna
4. Principal Secretary, Water Resources Department, Patna
5. Under Secretary (Administration) Water Resources Department, Patna
6. Superintending Engineer, Saryu Canal Khand 5, Baharaich, Uttar Pradesh

.... Respondents

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Appearance :

For the Petitioners : Mr. Alok, Advocate

For the Respondents : Mr. Rajiv Roy, GP 1 and
Mr. Arun Kumar, AC to GP 1

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 02-08-2018

Heard learned counsel for the petitioners and learned counsel for the State.

2. Relief claimed by the petitioners is that the petitioners be allowed benefits of the Old Pension Rules, 1950. Learned counsel for the petitioners submits that the new contributory pension scheme which has come into effect on 31.8.2005 is not applicable to the petitioners.

3. Petitioners have joined the service of the Government of Bihar pursuant to their being declared successful



and on selection/appointment as Assistant Engineer. Notification of appointment is dated 6.8.2008.

4. It is petitioners' contention that since prior to joining in the State of Bihar in August, 2008, they had been working as Junior Engineer in the Uttar Pradesh Government, where they governed by the Pension Scheme similar to the Old Pension Scheme of 1950 which was followed by the State of Bihar. Therefore, application of the contributory pension scheme in respect of petitioners, subsequent upon their joining in the State of Bihar, is to their prejudice.

5. Learned counsel has also submitted that application of the new contributory scheme is discriminatory inasmuch as the State Government in its various policy decisions dated 3.7.2007, 28.6.2011 and 8.8.2013 has made special provisions in this respect for others who were earlier governed under the Old Pension Scheme in their service under the Central Government or the state of Jharkhand so as to extend the benefits of the Old Pension Scheme, 1950 upon their joining in the State of Bihar even if they joined after 31.8.2005.

6. Learned counsel for the respondents has opposed the prayer of the writ petitioners. It is the contention of the respondent State, specifically stated in the counter affidavit, that the



policy decisions which are being relied upon by the petitioners dated 3.7.2007 and 28.6.2011 do not apply to the petitioners.

7. The policy decision of 3.7.2007 is Annexure 12 to the writ petition. It takes within its purview such employees who had already been serving in State of Bihar prior to coming into force New Pension Scheme but for some reason or the other have joined afresh on a different post under the service of the State of Bihar, itself. Relying upon the provisions contained in Rule 101(d) of the Bihar Pension Rules the State Government has resolved that since their resignation from another post under the State of Bihar with prior approval of the appointing authority to take up another appointment under the State of Bihar is not deemed resignation within the meaning of 101(d) of the Bihar Pension Rules, 1950. Therefore, they cannot be deprived of the existing benefits under the Old Pension Rules, 1950. Admittedly, the petitioners had joined the service of the State of Bihar for the first time in the year 2008. The resolution dated 3.7.2007 relied upon by the petitioners therefore has no application in this case since prior to the joining in the service in the State of Bihar in August, 2008 they were never the employees of the State of Bihar. On the contrary, prior to the joining in the State of Bihar they were employees of the State of Uttar Pradesh.



8. Other policy decision relied upon by the petitioners is a resolution of the Finance Department duly notified in the Gazette on 27.6.2011. This scheme is to extend the benefits of the Old Pension Scheme to such employees of the Central Government who prior to the cut off dated, i.e., 31.8.2005 were serving under the Central Government and for some reason have come to the State of Bihar subsequent to the implementation of the contributory pension scheme in the year 2005. The policy decision is specifically in relation to the employees coming from the Central Government. Admittedly, petitioners were not employees of the Central Government and are not covered by the provision of the resolution dated 28.6.2011.

9. The third resolution dated 8.8.2013 of the Finance Department provides benefits of the Old Pension Scheme for such employees who prior to the reorganization of the State of Bihar in the year 2000 were serving in the State of Bihar and getting the benefits of the Old Pension Scheme, 1950. For some reason due to bifurcation of the State their services subsequently was in the State of Jharkhand and thereafter when they came back in the State of Bihar even if they came back after implementation of the contributory pension scheme on 31.8.2005 the State of Bihar has made a provision so that they may not be deprived of their original



terms and conditions of the service including the Old Pension Scheme, 1950.

10. Petitioners prior to their appointment in 2008 were never employees of the State of Bihar, the Central Government or the State of Jharkhand which are covered under the resolutions relied upon by the petitioner.

11. It is in fact apparent from bare perusal of the resolution dated 8.8.2013 relied upon by the petitioner that same specifically excludes the claim to benefits under Old Pension Rules, 1950 of employees like the petitioner who have come into service under the State of Bihar from other States on or after 01.09.2005. Relevant extract of the resolution is being taken note of :

“अन्य राज्यों की सरकारी सेवा में कार्यरत कर्मियों की इस राज्य में 01.09.2005 को या इसके बाद नियुक्ति होने की स्थिति में उन्हें नई पेनशन योजना की ही लाभ देय है।”

12. In view of such clear stipulation contained in resolution dated 8.8.2013, which has not been challenged by the petitioners they cannot be heard to say that they would be entitled to the benefits otherwise under the said resolution of the State of Bihar dated 8.8.2013.

13. This Court would also notice that the petitioners have consciously taken up the service of the State of Bihar pursuant to their selection under the notification dated 6.8.2008. As on the



date, they joined their service in the State of Bihar they were only entitled to the benefits under the new contributory pension scheme of 2005. The joining has been with such terms and conditions and these terms of service would apply to them.

14. Having considered the matter as aforesaid, this Court would find that the petitioners have not been able to make out any case so as to warrant issuance of any direction upon the State Government to allow them the benefits of the Old Pension Scheme of 1950 in place of the new pension scheme of 2005.

15. The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.08.2018
Transmission Date	NA

