

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18273 of 2017

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Satyendra Prasad Singh Son of Sri Ramchandra Singh Yadav, Resident of
Village-Karmahi, P.S.-Daudnagar, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department, of General Administration,
Government of Bihar, Patna.
3. The District Magistrate District-Aurangabad.
4. The District Provident Fund Officer, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Priyadarshi, Adv. Mr. Sunil Kumar Dubey, Adv.
For the Respondent/s	:	Mr. Md. N. H. Khan-SC1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 08-07-2019

Heard learned counsel for the parties.

In this case, the petitioner is claiming that he should be inducted in the old pensionary scheme and wrongly he has been adjusted in the new pensionary scheme taking a plea that certain persons, who are below in the merit list, have been given the benefit of old pensionary scheme and non-granting same benefit to the petitioner reflects an act of arbitrariness and discriminatory approach towards the petitioner who belongs to same homogeneous group.

On the basis of requisition sent by the District Administration, Aurangabad, the Bihar Public Service



Commission (hereinafter to be referred to as 'the Commission') has issued Advertisement No. 39 of 1998 for the appointment of Class-3 post inviting application from the interested person having requisite qualification. Accordingly, the petitioner along with others applied against the vacancy published and the petitioner was called upon to appear in the written examination which he has done successfully, accordingly, the result was published. The Commission published the result of the successful candidates on 16.01.2003 (Annexure-2), recommended the name of the persons for the purpose of appointment on Class-3 post. The name of the petitioner was at serial no.32. Large number of persons below to the petitioner in the merit list, were recommended, accordingly, appointed as Class-3 post on 24.1.2004 (Annexure-4).

It will be relevant to state that the persons in the merit list at serial no. 39, 51, 55, 57, 60, 61, 63, 52, 53, 49, 54, 56, 62 and 63 were handed over the appointment on 24.1.2004 but, the petitioner was unfortunate to receive the appointment letter appointment which compelled the petitioner to approach this court in C.W.J.C. No. 5025 of 2004. During pendency of that writ application, the District Administration issued appointment letter in favour of the petitioner on 18.3.2006 and, accordingly, the petitioner joined the service on 24.3.2006. The new pension



scheme has been introduced on and after 1.9.2005, as the joining of the petitioner is after the cut-off date, he has been offered the benefit under new Pensionary Scheme and, those who have been appointed before the cut-off date, they have been granted the benefit of old pension scheme.

Learned counsel for the petitioner has raised a grievance that the petitioner and others who are below in the merit list applied against the same advertisement, appeared in the same written examination along with petitioner and, on being succeeded, have been appointed as Class-3 employee. Admittedly, the name of the petitioner is at serial no.32 and this Court has already mentioned some of the persons in serial number, as stated above, are below in the merit list who have been granted the benefit of old pension scheme as they entered into service prior to the petitioner, that has compelled the petitioner to approach this Court in the present case. The petitioner was selected as Class-3 employee in same transaction along with others before the cut-off date of enforcement of new pension scheme, in such event, merely for administrative lapse, the petitioner was not issued appointment letter but, that has been given after the enforcement of the pensionary scheme, will not deprive him to claim parity with the persons who are below in the merit list. As non-granting the



identical benefit at par with others, would lead to invidious discrimination. The petitioner was not appointed along with others on account of administrative lapses. The petitioner cannot be deprived better pensionary benefit.

In the counter affidavit, the State has only taken a plea of date of appointment of the petitioner after 1.9.2005 but, has not given an answer as to why the petitioner was deprived of the benefit of appointment and forcing him to approach to the writ court and, only thereafter, when they could know that it will be futile to resist the writ petition, the petitioner was granted the benefit of appointment.

In that view of the matter, this Court is of the view that the petitioner should be treated at par with the persons who are below in the merit list and, accordingly, the writ of mandamus is issued that the petitioner should also be granted the pensionary benefit under the old pensionary scheme alike others who are below in the merit list.

The petitioner has pointed out that the same incident was also taken place with other persons in different district and this Court has granted the benefit of shifting of date of appointment to those persons who are below in the merit list.



Let the authority should examine that if other persons in other places having been granted shifting of date of appointment, in that circumstances, the petitioner should also be given identical relief but, it is made clear that if the date of appointment is re-shifted, the same will be notional benefit only.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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