IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12591 of 2019

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1. Mukesh Kumar, Son of Late Baidyanath Singh resident of Village and P.O.- Madhurapur, P.S. Teghra, District- Begusarai.
2. Nitin Mukesh, Son of Late Mundrika Prasad Singh resident of Mohalla- Gur Ki Mandi, P.S.- Alamganj, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
4. The Director-in- Chief, Health Services, Bihar, Patna.
5. The Director-in- Chief (Disease Control), Health Services, Bihar, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : Mr. Ramadhar Singh (GP25)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 27-06-2019

1. Heard the learned counsel for the petitioner and the State.

2. The petitioners have challenged the order dated 07.03.2019 passed by the Director-in-Chief (Disease Control), Health Services, Bihar, Patna contained in letter No. 408(4),

whereby the request of the petitioners for being included in the old pension scheme has been rejected.

3. After several rounds of litigations, the Government of Bihar in the Health Department realized the necessity of advertising regular posts of Pharmacists vide Advertisement No. 22/Pharma-1/99 dated 25.01.2000. The applications were invited for 1059 posts of Pharmacists. Against the aforesaid advertisement, the petitioners had applied. However, before the appointment process would be concluded, the State of Bihar got bifurcated and a separate State, namely, State of Jharkhand was created. The old pension scheme applicable to the employees of the State Government was done away w.e.f. 01.09.2005 and a new pension scheme, namely, Contributory Provident Fund Scheme came into existence. This presupposes that any appointee after 01.09.2005 was covered under the aforesaid scheme and not the old scheme.

4. It would not be necessary for this Court to take note of the various stages of the litigation which ultimately led to the conclusion of the selection process of Pharmacists

against the aforesaid advertisement and petitioners and others came to be appointed ultimately in the year 2014.

5. After the selection process was over, the petitioners and others represented before the Principal Secretary of the Health Department, bringing to his notice that because of the delay in the selection process, the petitioners and others were deprived of being included in the old pension scheme and for no fault of theirs, they would now be amenable to the CPF Scheme. The only reason for such request was that the government / appointing authority took a long time in concluding the selection / appointment process, giving lesser time to the petitioners and their likes to enjoy the fruits of government service. The other reason for agitating against the application of CPF Scheme was that with lesser number of years as tenure of these persons with short length of service, the contribution made by them under the new scheme would not be sufficient to provide them with adequate funds in the crepescular times.

6. This issue was also raised on the floor of the Legislative Assembly but no positive response of the government came forth.

7. In the meantime, a learned Single Bench of this Court in Md. Kayumuddin Ansari & Ors. Versus The State of Bihar & Ors (C.W.J.C. No. 10901 of 2006) held that because of the delay in selection process of Drug Inspectors who could be appointed only in the year 2005, it was not proper for them to be allowed to be governed by the new pension scheme and not the old scheme which was prevalent at the time of vacancy and advertisement for filling up such posts, normally applied to the appointees against such vacancies. The aforesaid judgement of the learned Single Judge of this Court was affirmed in L.P.A. No. 589 of 2013, whereafter the Health Department vide its resolution implemented the aforesaid decision of the Court and extended the benefit of the old pension scheme to Drug Inspectors who were appointed after 01.09.2005 against the advertisement of the year 2002.

8. Under similar circumstances, another Bench of this Court in Raj Narayan & Ors. Versus the State of Bihar & Ors.

(C.W.J.C. No. 20654 of 2010) applied the same ratio and directed for application of the old scheme to the T.B. Attendants/4th Grade employees under the Tuberculosis Programme, Department of Health, Government of Bihar, Patna, who too were appointed against an advertisement of the year 1997.

9. The claim of the petitioners for being subjected to the old pension scheme is based on the aforesaid two decisions of this Court as also the resolution of the government accepting such judgement and applying the principle to the services of the Drug Inspectors and T.B. Attendants/4th Grade employees.

10. The petitioners approached this Court with similar relief vide C.W.J.C. No. 7094 of 2016 which was permitted to be withdrawn to enable the petitioners to press their representation before the Director-in-Chief (Disease Control), Health Services, Bihar, Patna.

11. The aforesaid issues have not been adverted to in the order impugned and a simplistic approach has been adopted by the Director-in-Chief (Disease Control), Health

Services, Bihar, Patna in rejecting the claim of the petitioners only on the ground that their appointment is of the year 2014 whereas the old scheme ended on 01.09.2005. The order does not refer to the judgements of this Court and the earlier decisions of the government in according such pension scheme to an employee whose appointment process began prior to the year 2005.

12. On this score, it has been urged on behalf of the petitioners, the order suffers from lack of application of mind.

13. Mr. Ramadhar Singh, learned GP-25, while defending the order impugned has submitted that the order is categorical in stating that the petitioners are appointees of 2014 and, therefore, they would be subjected to a scheme of pension which was prevalent at the time of their appointment.

14. He further submits that no doubt some of the appointees in the Health Department have been accorded the benefit of old pension scheme on the ground that the selection process against which they were appointed begun prior to 2005. Such cannot be the precedent for all the appointees in any service; more particularly in Health Services. The old

pension scheme has been done away with and a new pension scheme is in existence since 2009. Allowing old scheme to be perpetuated would only frustrate the principle behind CPF scheme and it would create separate group of such appointees who would be governed by a different scheme. Any perpetuation of what has happened in the past would not only create difficulties for the Personnel Department but would also open flood gate for such old schemes to be applicable in the present times.

15. Mr. Singh has further submitted that in the case of Md. Kayumuddin Ansari (supra) the appointment letter was issued in the year 2005 without any communication of the new scheme to be applicable to such appointees. In their cases, the vacancy was advertised in the year 2000. Making a distinction with their cases, Mr. Singh has stated that the post of Pharmacists were not available in the Health Department, but only because of the Court giving a direction in Public Interest Litigation that the post of Pharmacists was created and for the first time advertisement was issued for filling up such posts. The delay in conclusion of the appointment process could not

solely be attributed to the government in the case of Pharmacists. In that event, since the appointment process took around 12 years, it would be too much for the petitioners to seek advantage of the old pension scheme on the grounds of parity.

16. Perused the records of this case as also the orders passed by the Hon'ble Single and Division Bench of this Court. The aforesaid aspects have not at all been adverted to while rejecting the request of the petitioners to make available to them the old pension scheme.

17. The concerned respondent, i.e., Director-in-Chief (Disease Control), Health Services, Bihar, Patna was required to apply his mind to the facts of this case as also the litigation policy of the State of Bihar and the pros and cons of the application of the old scheme to the case of the petitioners or denial of the same. The order, therefore, is laconic and non-speaking in that respect.

18. For the aforesaid reasons, this Court finds the order to be unsustainable in the eyes of law and, therefore, has no option but to set it aside.

19. The order is consequently set aside. The matter is remitted to the Director-in-Chief (Disease Control), Health Services, Bihar, Patna to write out a fresh order in accordance with law within a period of six weeks from the date of production/communication of a copy of this order. Needless to state that the concerned respondent shall take into account all aspects of the matter before passing any order.

20. With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
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