

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14588 of 2019

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1. Barhu Prasad, Retired Sub-Judge Cum Addl. Chief Judicial Magistrate, Hajipur, aged about 64 years, male, S/o late Bekaru, resident of Village-Karchhulia, P.O.- Nagwa, P.S.- Uska Bazar, District- Sidharth Nagar (U.P.).
 2. Khedan Prasad, Retired A.C.J.M. Cum Sub-Judge, Betia, aged about 64 years, male, S/o late Mohar Prasad, resident of Mohalla- Kasera Toli, Padreuna, P.S.- Padrauna, P.O.- Padrauna, District- Khushi Nagar (U.P.).
 3. Lal Bahadur, Retired A.C.J.M. Cum Sub-Judge, Bagha (Betia), aged about 64 years, S/o late Musafir Ram, resident of Village- Shankerpur Majhauwan, P.O.- Kasa, under P.S.- Bhinpura, District- Balia (U.P.).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Law, Patna.
2. The Principal Secretary, Law Department, Govt. of Bihar, Old Secretariat, Patna.
3. The High Court of Judicature at Patna through the Registrar General, Patna.
4. The Secretary to the Govt. of Bihar, General Administration Department, Bihar, Patna.
5. The Accountant General (A & E), Veerchand Patel Path, Bihar, Patna.
6. The Principal Secretary, Department of Finance, Govt. of Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	: Mr. Shailendra Kumar Jha, Advocate Mr. Dilip Kumar Jha, Advocate
For the State	: Mr. Sunil Kumar Mandal, SC-3 Mr. Bipin Kumar, AC to SC-3
For the Patna High Court	: Mr. Mrigank Mauli, Advocate
For the A.G.	: Mr. Amar Nath Singh, Advocate



CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-10-2019

Heard learned counsel the parties.

2. The petitioners raises two-fold contentions.

The first is that on account of their delayed appointments, they have been deprived of the benefit of qualifying years of service and on the other hand, the benefits of pension which had been extended were reduced by the respondent/the State Government through the impugned decisions.

3. Consequently, a prayer has been made on both counts that their period which they had spent idle after having qualifying in the services should not be ignored and secondly that the impugned decisions whereby the rule of proportionate reduction in pension on not fulfilling the qualifying years of 25 years of service should be quashed.

4. We have perused the pleadings and have considered the submissions, in detail, advanced on behalf



of the parties.

5. On this issue as to whether the petitioners were deprived of being appointed immediately after having qualified suffice it to say that any such inaction may or could have been given a cause of action to the petitioners, but the fact is that the appointments have been made in the year 2001. This undisputed fact, therefore, has to be gone into for the purpose of computing the qualifying years of pension. Delay in appointment cannot be a ground now after about 18 years to be a valid plea for any such claim.

6. So far as the second ground of challenge is concerned, we find a complete answer to the said issue raised in paragraphs 15 – 18 of the counter affidavit of respondent No. 6, which has also been adopted by the Finance Department in a counter affidavit filed by the respondent No. 3 as well as by the High Court/respondent No. 4.

7. The contents of the said affidavit are sufficient to meet the arguments advanced on behalf of the learned counsel for the petitioners, which are extracted



hereinbelow:

"15. That however, inadvertently error crept in the resolution number 11859 dated 28.12.2011 and the amendment made in the previous resolution number 14303 dated 22.12.2010 (Annexure-C) was not clearly spelt out, in as much as it could not be clarified that the qualifying years of service for full pension shall be 20 years and the judicial officer completing more than 10 years of service, but less than 20 years of service shall get proportionate pension, which was already mentioned in resolution number 14303 dated 22.12.2010 (Annexure-D).

16. That due to the aforesaid inadvertence, a state of confusion emerged regarding the qualification period for full/proportionate pension of judicial officer. The Office of the Accountant General (A&E), Bihar pointed out the ambiguity vide its memo no. 911 dated 06.09.2018 and requested for clarification as to whether full pension will be admissible to judicial officer completing less than 20 years of service.

17. That in view of the ambiguity shown by the office of the Accountant General (A&E), Bihar, Patna, the matter was placed before the cabinet for necessary clarification in resolution number 11859 dated 28.12.2011. After the approval from the cabinet the Finance Department has issued resolution number 1529 dated 11.02.2019, in which the clarification was issue that the minimum years of service for getting pension shall be 20 years for judicial officers and in case of service rendered by the judicial officers is less than 20 years but more than 10 years, proportionate pension shall be given.

A photocopy of the resolution number 1529 dated



11.02.2019 is annexed herewith and marked as Annexure-H.

18. That is is humbly stated and submitted that the resolution number 1529 dated 11.02.2019 has been issued by the State government in its Finance Department for clarifying the correct legal pension as explained in the previous paragraphs. The qualifying years of service of 20 years was already fixed vide resolution number 14303 dated 24.12.2010 in compliance of the recommendation of the justice Padmanabhan Committee and the order dated 26.07.2010 passed by the Hon'ble Supreme Court. The resolution number 11859 dated 28.12.2010 passed was issued by the State government only to revise the date of implementation from 02.09.2008 to 01.01.2006, and not to do away with the minimum years of qualifying service for full/proportionate pension. However, due to inadvertence, the ambiguity regarding the qualifying service for full/proportionate for judicial officers retiring on or after 01.01.2006 crept in the resolution number 11859 dated 28.12.2019. To eradicate the aforesaid inadvertence, the resolution number 1529 dated 11.02.2019 has been issued, which is legal, valid and in accordance with the law as well as the order dated 26.07.2010 of the Hon'ble Supreme Court."

8. We also, on an examination of the resolutions dated 22.12.2010 and 28.12.2011 coupled with the order passed by Hon'ble the Apex Court, as referred to in the counter affidavit, as well as the resolution dated 11.02.2019, are of the view that there is no room



for doubt that an inadvertence that had crept in the resolution of the Government while fixing the date of employment cannot by itself resolve the substantive rules which requires a minimum of 20 years of service to qualify for full 50% pension.

9. It is also clear from a perusal thereof that the Judicial Officer who has completed more than 10 years of service, but less than 20 years cannot claim such full pension and the same has to be proportionately computed. No rebuttal at all has been made of the said stand of the respondents.

10. Learned counsel for the petitioners has relied on the judgment of the Division Bench of Delhi High Court in the case of ***Naresh Kumar Vs. Union of India & Ors. [W.P.(C) 3860/17]***, decided on 06th December, 2018.

11. Having perused the said judgment in case of ***Naresh Kumar*** (supra), we find that the ratio thereof is only in relation to re-fixation of the notional seniority and the same does not touch on the issue of proportionate



reduction of pension and qualifying years of service, which is the issue involved in the present petition.

12. We, accordingly, find no error, much less a legal error in the impugned decisions taken by the State Government, so as to proceed to quash the resolutions impugned therein. The petition lacks merits and is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Praveen-II/Shageer

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18.10.2019
Transmission Date	N/A

