

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17285 of 2018

1. The Union Of India through the Chief Postmaster General, Bihar Circle, Patna-800001
2. Postmaster General, East Region, Bhagalpur at Patna-800001
3. The Superintendent of Post Offices, Bhagalpur Postal Division, Bhagalpur-812001.
4. The Director of Postal Accounts Patna-800001.

... Respondents ... Petitioner/s

Versus

Uma Kant Jha Son of Late Muni Lal Jha, Resident of Village - Manjira, P.O.-
Manjira Gauripur, District-Banka-813102.

...Applicant ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Verma, ASG
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

**The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.**

Date : 28-08-2020

Heard the parties.

Petitioners have prayed for following relief:-

“That the present writ application is being filed on behalf of petitioners for quashing the order dated 01.06.2018 passed in O.A. No. 050/00166/2017 (Uma Kant Vs. The Union of India & Ors.) passed by the Central Administrative Tribunal, Patna Bench, whereby and whereunder the CAT, Patna Bench has disposed of the O.A. application



with a direction upon the respondents to grant to the applicant/respondent the benefits of PPF and old pension scheme, as has been held in earlier decision passed in the case of Shankar Sah.”

Briefly stated the facts of the case is that respondent was initially appointed as Extra Departmental Branch Postmaster in Banka division in account of Banka post office on 26.10.1976., where he served as Extra Departmental Branch Postmaster for about 28 years 6 months and after getting promotion in MTS cadre he joined in the departmental cadre on 26.04.2005 as a regular employee and retired on 30.11.2016 and his total length of service in the departmental cadre as MTS was counted as 11 years 06 months and 20 days. His pension was fixed under New Pension Scheme which was made effective from 01.01.2004.

It was submitted before the Tribunal that respondent was promoted as MTS employee on 26.04.2005 but same was against the vacancy of 2003 as such his service ought to have been counted from 2003 itself and respondent is entitled for pensionary benefit under Old Pension Scheme.

Issue before the Tribunal was whether the applicant who was appointed in regular cadre by way of promotion after



01.01.2004 would be governed by Old Pension Scheme or New Pension Scheme which was made effective from 01.01.2004.

Respondent has entered in service in postal department as extra departmental employee on 26.10.1976 in Banka Postal Division. Extra departmental employees form a separate cadre and are governed by separate service conditions and recruitment rules. They are not the regular employees of the postal department. They are brought in the regular cadre of postal department by way of promotion for which 25 % of the MTS vacancies are filled up by promotion from extra departmental staff cadre, which is conducted by the departmental promotion committee. In order to qualify for such promotion, extra departmental employee has to serve the department for a specified period.

New pension scheme which was made effective from 01.01.2004 is applicable to the central government employees, who entered into the service of the central government after 01.01.2004. Respondent entered into the service of central government on 26.10.1976 although not as a regular employee but as extra departmental employee and thereafter was promoted in the regular establishment on 26.04.2005 after his name was recommended by the D.P.C. in its meeting held on 26.04.2005



against 2003 vacancies as such his entry in central government cannot be said to be after 01.01.2004. Many benefits for which regular central government employees are entitled are extended to extra departmental employees as well. However, qualifying service for grant of pension will be service rendered as regular MTS employee as service rendered as Extra Departmental employee is not pensionable.

A Division Bench of this court in **C.W.J.C No.17204 of 2015 (The Union of India & Ors. Vs. Mukti Prasad Yadav)** since reported in **PLJR 2016(2) 480** while considering the issue of New Pension Scheme *vis a vis* Old Pension Scheme with respect to employees who are not serving as regular employees in the department in para no. 4 has held as following:

“4. The Tribunal, noticing the Full Bench judgment as well as the judgment of the Karnataka High Court in this regard in favour of the employees, held that they would be covered by the Old Pension Scheme. To us, the problem is simple. The new Pension Scheme would apply to persons coming in Government Service after 01.01.2004. The applicants before the Tribunal were first casual labourers, but with effect from 1989 they acquired the temporary status or the status of a



temporary employee of the Government in the Department of Posts. After three years of such continuous service, they were entitled to certain benefits, which a permanent Group-D employee gets. They were receiving the same, pending confirmation in service as a permanent employee. Towards pensionary benefits, G.P.F. deductions were made. Then came cut-off date as 01.01.2004. In the meantime, the vacancies having occurred in the year 2011, they were substantially appointed as permanent employees. They were regularized as permanent employees. To us, the answer would be evident from the fact that they were already in service prior to 01.01.2004, though in a temporary status. To us, it appears that the meaning of the Scheme, which puts the cut-off date as 01.01.2004 is that all those persons, who have come in service after 01.01.2004 would be covered by the New Pension Scheme. As noted and stated above, the applicants before the Tribunal, the respondents herein, were already in service, though in temporary status prior to the cut-off date. To them, this cut-off date would not apply, and consequently they would be deemed to be in service on 01.01.2004 having been confirmed as permanent



employees in Group-D with effect from 2011. Thus, we find no error in this judgment and order of the Tribunal.

The Central Administrative Tribunal on the basis of several judgments pronounced by Tribunal as well as High Court and relying upon different circulars issued by the central government has held that respondent is entitled for benefit under the old pension scheme.

After hearing counsel for the parties and perusing the judgment and order passed by the Central Administrative Tribunal, this Court does not find any error or infirmity in the order passed by the Central Administrative Tribunal, Patna Bench Patna, requiring any interference of this court in its writ jurisdiction and accordingly writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.10.2020
Transmission Date	NA

