

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22232 of 2018

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1. Ashok Kumar Sharma and Ors Son of Late Vijay Bahadur Singh resident of Mohalla- Babu Bazar, Ara, P.S.- Ara, District- Bhojpur.
 2. Rajesh Kumar Singh, Son of Sri Alakh Niranjana Singh, resident of Village and P.O.- Kauriya, Via- Gulwara Madhuban, District- East Champaran.
 3. Rajesh Kumar, Son of Sri Shambhu Saha, resident of Village P.O. P.S.- Raj Mahal, District- Sahebganj Jharkhand.
 4. Gyananand, Son of Late Shatrughan Thakur, resident of- Bhusauda Balupur, Manpur, P.S.- Muffasil, District- Gaya.
 5. Chandra Shekhar Tiwary, Son of Sri Hari Shankar Tiwary, resident of Village- Tiwary Chapra, P.S.- Kateya, District- Gopalganj.
 6. Prakash Kumar Sinha, Son of Late Sudhir Kumar Sinha, resident of Village- Chapra Colony, New Jakkampur, P.S.- Jakkampur, District- Patna.
 7. Sanjay Kumar Jha, Son of Mr. Hari Nandan Jha, resident of Village P.O.- Bashha, P.S.- Bajpatti, District- Sitamarhi.
 8. Raj Kishore Sharma, Son of Late Braj Bihari Sharma, resident of Village P.O.- Ganghara, P.S.- Danapur, District- Patna.
 9. Md. Reyaz Shahid, Son of Md. Shamsuddin, resident of Mohalla- Lakhna, P.O. and P.S.- Madhupur, District- Deoghar Jharkhand.
 10. Md. Moinuddin, Son of Md. Nizamuddin, resident of Village P.O.- Nuranpur, Babu Tola, P.S.- Raj Mahal, District- Sahebganj Jharkhand.
 11. Lalit Kumar Jha, Son of Late Chandrashekhar Jha, resident of Village- Kachhua, P.O.- Chakauti, Via- Ratanpur, District- Darbhanga.
 12. Ashutosh Kumar, Son of Ramawatar Sharma, resident of- M.I.G.- 54, Hanuman Nagar, P.S.- Patrakar Nagar, Kankarbagh, Patna.
 13. Rajeev Ranjan Chakravarty, Son of Ramashray Chakravarty, resident of- At P.O.- Sarhan, P.S.- Pandarak, District- Patna.
 14. Prem Kumar, Son of B.K.P. Sinha, resident of Village P.O.- Babhan Bigha, P.S.- Barbiga, District- Sheikhpura.
 15. Shambhu Nath Ram, Son of Ram Naresh Ram, resident of Village P.O. Panchua, P.S.- Ekma, District- Saran.
 16. Pankaj Kumar Singh, Son of Late Tripurendra Narayan Singh, resident of Village- Mahua, P.S.- Ghailarh, District- Madhepura, at present posted as In-charge Circle Officer, Kiratpur, Darbhanga.
 17. Tara Prakash, Son of Bhirguath Singh, resident of Village- Derhgaon, P.O.- Derhgaon, P.S.- Dawath, District- Rohtas.



18. Ram Kumar Raman, Son of Late Keshar Ram, resident of Village- Candy Nagar, P.O.- Kolhaiya, P.S- Chatra, District- Chatra Jharkhand.
19. Lodha Barhaik, Son of Late Sukar Barhaik, resident of Village- Karimari, P.O.- Lachrhagarh, P.S. District- Gulma Jharkhand.
20. Anuj Kumar, Son of Durga Nand Prasad, resident of- At P.O.- Laundh, P.S.- Sirdala, District- Nawada.
21. Ajeet Kumar Jha, Son of Late Bhogendra Jha, resident of Village P.O.- Sourath, P.S.- Saurath, District- Madhubani.
22. Neel Ksush Kumar Sinha, Son of Late Rajdeo Prasad Sinha, resident of Village- Mohanpur, P.O.- Beshchak, P.S.- Islampur, District- Nalanda.
23. Abhay Kumar, Son of Late Jagannath Prasad, resident of Village P.O.- Duman Belma, P.S.- Madanpur, District- Aurangabad.
24. Bhuneshwar Yadav, Son of Sri Kishori Yadav, resident of Village P.O.- Gilani, P.S.- Sare, District- Nalanda.
25. Pankaj Kumar, Son of Sant Kumar Sinha, resident of Mohalla- Chandmari, Near- M.S. College- Gate, P.S.- Motihari, District- East Champaran.
26. Lalit Kumar Singh, Son of Gorakh Nath Singh, resident of- B/5, Vivekanand Park, Patliputra Colony, P.S.- Patliputra, District- Patna.
27. Anil Bhushan, Son of Late Sidheshwar Thakur, resident of Village- Hindu Chakiya, P.S.- Chakiya, District- East Champaran.
28. Upendra Kumar Tiwari, Son of Late Ramsagar Tiwari, resident of Village P.O.- Belaur, P.S.- Guthani, District- Siwan.
29. Bharat Bhushan Singh, Son of Late Visheshwar Singh, resident of Village- Mir alipur, P.S.- Baliya, District- Begusarai.
30. Sanjay Kumar Singh, Son of Late Rameshwar Prasad, resident of Village P.O.- Kawan, P.S.- Parasbigaha, District- Jehanabad.
31. Jai Prakash Swarnker, Son of Late Shukdeo Prasad Swarnkar, resident of- At P.O.- Kasba, P.S.- Kasba, District- Purnea.
32. Subodh Kumar, Son of Somdutt Singh, resident of Mohalla- Sultanpur, P.S.- Danapur, District- Patna.
33. Praveen Kumar Batsa, Son of Indra Narayan Jha, resident of Village P.O.- Bina Babhangava, P.S. District- Supaul.
34. Kumari Anukampa, W/o Sri Ashok Kumar, At- Guddar Pandey Lane, P.O.- Buniyadganj, P.S.- Muffasil Gaya, District- Gaya Bihar, Pind Code- 823003.
35. Bijay Kumar Gupta, Son of Kedar Nath Prasad, At- Talbanna, Durga Mandir, P.S.- Sahebganj Sadar, P.O./ District- SAHIBGANJ, PIN- 816109 JHARKHAND.
36. Raja Ram Keshari, S/o Late Shanker Lal Keshari, resident of Mohalla-



Durga Mandir Chauk, Jhajha, P.S.- Jhajha, District- Jamui.

... .. Petitioners

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.
3. The Finance Secretary, Government of Bihar, Patna.
4. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

Mr.Mithilesh Kumar Rai, Adv.

For the Respondent/s : Mr.Sheo Shankar Prasad -Sc8

For the BPSC : Mr. Nishant Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 09-12-2020

1. The petitioners have approached this Court for a direction to the respondents not to give effect to the New Pension Scheme as notified under memo no. 690 dated 03.03.2006 of the Finance Department, whereby it has been declared that the persons appointed on or after 01.09.2005 shall only be entitled to New Pension Scheme, namely, Contributory Provident Fund Scheme in terms of an Extra Gazette Notification No. 614 dated 18.11.2005.

2. It has been submitted that the appointments of the petitioners is against a panel which was prepared pursuant



to an Advertisement No. 01/1990 and, therefore, even if the appointment letters were issued to the petitioners after 01.09.2005, the same principle would apply which was applicable to the candidates who were appointed out of the same panel pursuant to the same advertisement but prior to 01.09.2005.

3. A brief background of the cases of the petitioners need be stated.

4. In the year 1990, Advertisement No. 01/1990 was issued by the Bihar State Subordinate Selection Board for filling up vacancies in different departments of the State of Bihar. The vacancies were not numbered and it was an open ended advertisement which included the anticipated vacancies, which were required to be filled up on the basis of the 3rd graduate level competitive examination. Shortly, thereafter, a decision was taken by the State Government to merge the Bihar State Subordinate Service Selection Board with Bihar Public Service Commission w.e.f. 28.02.1992. Pursuant to such merger, the examination was conducted by the Bihar Public Service Commission against the same



advertisement which was issued by the Bihar State Subordinate Selection Board in the year 1990.

5. The Government of the day, on being questioned about the vacancies which were required to be filled up, suggested that any vacancies arising between 1990 and 1993 were required to be filled up against the aforesaid advertisement of 1990. This was obviously based on the idea that initiating a fresh selection process would be cumbersome and would result in delay in filling up of the vacancies. The first of the lists published by the Bihar Public Service Commission came out in the year 1996 and amended list followed it in the year 1997. However, in view of the fact that not all posts which had fallen vacant till 1993 were filled up by the aforesaid process, a writ petition vide C.W.J.C. 1376 of 1997 was filed seeking a direction for filling up all the posts which had fallen vacant by the year 1996.

6. This Court, however, directed vide order dated 03.01.1998 that all the vacancies which had fallen vacant till 1993 be filled up within a period of six months.



Approximately, 731 posts were filled up but many posts which had fallen vacant between 1990-93 in various departments of the State of Bihar were never notified to the Bihar Public Service Commission. There was another round of litigation for filling up of those vacancies and the litigation bore fruit.

7. The various departments notified the existence of a number of vacancies which had arisen prior to 1993.

8. A reference may also be made to the decision in C.W.J.C. 9304 of 2009, in which, this Court had directed the respondents to fill up all the vacancies, which arose before 1993 within one month from the date of passing of the order.

9. The appointments pursuant to the aforesaid order were made till the end of the year 2011, the petitioners being the last of such appointees against those vacancies, which had fallen vacant prior to 1993.

10. In the meantime, as has been noted in the earlier part of the order, the State Government came up with the new Pension Rules. The petitioners did not know that they have



been subjected to the New Pension Rules.

11. Hence, the present petition.

12. It has been urged on behalf of the petitioners that in several judgments of the Supreme Court as also of this Court, it has been settled that the old vacancies are governed by the old rules and any new rule which comes into force after the selection process has commenced, shall not be applicable to the selection process which had commenced prior to coming of such new rules. So far as pension is concerned, it is a right and not a bounty, which has been settled by several decision of the Apex Court as well as this Court and any change in the rule whereby pension is to be calculated has to follow a definite pattern and cannot be discriminatory under any account. The rules of pension have to be in consonance with terms and conditions of the service and the extant rules. If the petitioners are appointees of old selection process, they would be entitled to the Old Pension Scheme and cannot be forced to submit to the New Contributory Pension Scheme which has come into effect since 01.09.2005.



13. Learned counsel for the petitioner has also submitted that by several decisions of this Court, the issue with regard to applicability of the pension scheme has been decided and there is no scope for any departure from the said principle.

14. As opposed to the aforesaid contentions, learned counsel for the State has submitted that the appointment of the petitioners cannot be deemed to be appointment prior to 01.09.2005 as claimed by them as it is a well settled principle of law that an appointment cannot be made retrospectively (refer to 2003 (5) SCC 511 (Santosh Kumar vs. State of A.P.)). It has further been submitted that the appointment of the petitioners was made pursuant to the order dated 06.08.2009 in C.W.J.C. No. 9304 of 2009 in the year 2011. This was entirely a different set of appointment and the petitioners were late entrants in service. Thus, the rules of 2005 which are the new Pension Rules ought to be applied to them. Not doing so would result in perpetuation of something, which is neither desirable nor would be in public interest.

15. On a careful consideration of arguments advanced on



behalf of the parties, it is very clear that for all practical purposes, the case of the petitioners are similar to those who were selected earlier under the same selection process against the advertisement of 1990. Though the date of entry in service is relevant but the new rules of pension would apply to only new entrants and the new entrants would be those whose appointment process would have commenced after the formulation of new Pension Rules.

16. Though, it might sound rather anomalous that an appointee of the year 2011 is being treated differently than an appointee of the same year but whose selection process began later than 2005 but the service jurisprudence dictates that all condition of service including pensionary benefits would have to be in accord with the advertisement and terms of service conditions. The terms of service condition is inherent in the advertisement and in the selection process. Thus, in a way, doctrine of relation back cannot totally be ignored in deciding the cases of the petitioners. The respective departments of the Government ought to have taken note of the series of decisions in that regard and ought



not to have left the matter in lurch for the petitioners to approach the door of judiciary. This is what has been ordained in the Bihar Litigation Policy.

17. The case cited by the learned counsel for the State are not applicable to the facts of this case. In fact, on the contrary, in *Raj Narayan & Ors vs. the State of Bihar & Others* (C.W.J.C. No. 20654 of 2010) and in *Md. Kayumuddin Ansari & Ors. vs. the State of Bihar & Ors* (C.W.J.C. No. 10901 of 2006), it has been held that the appointees of the same selection process shall be governed by the old Pension Scheme which was in operation on the date of advertisement. The same line of reasoning has been followed in *Rakesh Kumar & Ors. vs. the State of Bihar & Ors* in C.W.J.C. No. 14039 of 2014.

18. Considering the afore-noted aspects, this Court directs that the concerned authorities / respondents would abide by the principle delineated in the decisions rendered in the afore-mentioned cases and shall treat the petitioners to be the appointees against the advertisement of 1990 and shall apply to them the Pension Rules which were in currency at



the time of the advertisement which is the Old Pension Rules and not the New Pension Rules i.e. Contributory Provident Fund Scheme.

19. The writ petition stands allowed with in the terms which has been stated above.

(Ashutosh Kumar, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11.12.2020.
Transmission Date	N/A

