

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9567 of 2017

=====

Prem Kumar, Son of Pundeo Thakur, Resident of Village- Narayan Bheriyahi,
P.S. Kanti, Post- Srisiya, P.S. Kanti, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Director, G.P. F. Directorate, Govt. of Bihar, Patna.
5. The District Magistrate, Muzaffarpur.
6. The District Education Officer, Muzaffarpur.
7. The District Programme Officer, Establishment Muzaffarpur, District- Muzaffarpur.
8. The District Provident Fund Officer, Muzaffarpur, District- Muzaffarpur.
9. The Drawing cum Disbursing Officer, Govt. Middle School Kaparpura, Kanti, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Madhaw Prasad Yadav-GP23

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 20-02-2020 Heard learned counsel appearing on behalf of the
petitioner and the State.

The grievance of the petitioner in the present
application is denial of benefit of Old Pension Scheme.

Learned counsel for the petitioner has drawn the
attention of this Court to Annexure-1, the office order of
appointment of the petitioner, vide memo no. 3510, dated
05.12.1999. After the office order petitioner was taken to
custody in connection with criminal case under Section 304B



read with Section 34 of the Indian Penal Code. After his release he approached the District Superintendent of Education, Muzaffarpur for accepting his joining but was not allowed to join. Thereafter the petitioner approached this Court for a direction to the respondents to allow him to join in terms of the appointment letter dated 05.12.1999. The writ Court declined to grant indulgence vide order dated 18.02.2003. The petitioner thereafter filed an appeal bearing LPA No. 235 of 2003 which was disposed of on 04.04.2013. The relevant part of the order in LPA No. 235 is as under:

“In our view, learned single Judge rightly held that so long criminal case is pending, the appellant cannot be allowed to join. However, if the criminal case is decided in favour of the appellant, then the authorities may consider his case for joining on the said post in view of the appointment letter issued to him earlier. In case, the matter is decided against the appellant, there is no question of allowing him to join on the said post.”

The petitioner was acquitted in criminal case vide judgment dated 25.08.2003. After acquittal, the petitioner approached the District Superintendent of Education, Muzaffarpur for allowing him to join with reference to the order passed by the LPA Court mentioned herein above. The



respondents consumed more than two years in allowing the petitioner to join and his joining was accepted only on 19.09.2005. The District Superintendent of Education, Muzaffarpur issued order for accepting joining, pursuant thereto, the petitioner joined on 21.09.2005, in the meanwhile, the New Pension Scheme was introduced w.e.f. 01.09.2005.

The grievance of the petitioner in the facts of the case is that petitioner was appointed pursuant to memo no. 3510 dated 05.12.1999 and vide office order dated 19.09.2005 notwithstanding the fact that there was order of the LPA Court dated 04.04.2003, acquittal of the petitioner in Session Trial No. 567 of 2000 vide judgment dated 25.08.2003. The subsequent change in the pension scheme will not cause prejudice to the petitioner as the petitioner was appointed pursuant to memo no 3510 dated 05.12.1999, there was a favourable order of the LPA Court on 04.04.2003, acquittal order dated 25.08.2003 and request of the petitioner for accepting joining is dated 05.09.2003.

Learned counsel for the petitioner submits that the petitioner cannot be made to suffer on account of delay of two years at the level of the respondent authorities. The office order dated 19.09.2005 has taken note of the entire fact of his



appointment vide memo dated 3510 dated 05.12.1999, his custody in connection with Kanti P.S. Case No. 119 of 1999, the order of the LPA Court dated 04.04.2003 and the order of the acquittal in Session Trial No. 567 of 2000. In the backdrop of the aforesaid fact the petitioner who was allowed to join pursuant to the appointment order dated 05.12.1999 i.e., much before the cut off date of 01.09.2005 as applicable to New Pension Scheme.

Considering the facts and circumstances that the appointment of the petitioner is pursuant to memo no. 3510 dated 05.12.1999, the Court failed to understand the reasoning of the respondents in treating the petitioner covered by New Pension Scheme. It is now well settled that one cannot take advantage of its own law. Reference in this connection is made to the Judgment of the Bombay High Court reported in AIR (1954) Bombay 232 and the judgment of the Apex Court reported in (1989) SCC 1133.

Considering the facts and circumstances discussed herein above, the order contained in Annexure-10 dated 22.06.2017 is hereby quashed. The respondents are directed to treat the petitioner as covered by the Old Pension Scheme. Necessary corrective measures must be taken by the respondents



within a maximum period of 60 days from the date of receipt/production of a copy of this order.

Writ application is allowed and disposed of in the manner indicated herein above.

Rishi Kumar/-

(Anil Kumar Upadhyay, J)

U			
---	--	--	--

