IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15363 of 2021

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1. Rajeev Kumar Karn, son of Govind Lal Karn, resident of Mohalla-Chittrgupt Nagar, Police Station-L.N.M.U. Campus, District-Darbhanga.
2. Shailendra Kumar, Son of nashivlal, resident of Madhpur, Police Station-Laukha, District-Madhubani.
3. Sanjay Ram, Son of Late Sukhdev Ram, resident of Village-Pachhiyari, Toltabhak, Police Station-Vibhutipur, District-Samastipur.
4. Rajeev Kumar Paswan, Son of Harishankar Paswan, resident of Village-Dhurlakh Ward No. 4, Police Station-Samastipur, District-Samastipur.
5. Jitendar Ram, Son of Late Maksudan Ram, resident of Village-Arout, Ward No. 5, Police Station-Rosera, District-Samastipur.
6. Abhay Kumar, Son of Satyadev Yadav, resident of Village-Tardih, Police Station-Sakatpur, District-Darbhanga.
7. Alok Kumar Verma, son of Suresh Prasad, resident of Village-Kunjaila, Police Station-Roh, District-Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. Principal Secretary, Finance Department, Government of Bihar, Patna.
5. District Magistrate, Siwan.
6. District Magistrate, Samastipur.
7. District Magistrate, Nalanda, Biharsharif.
8. District Magistrate, Darbhanga.
9. District Magistrate, Madhubani.
10. Bihar Staff Selection Commission, Bihar through Secretary, Bihar Staff Selection Commission, Bihar, Patna.
11. The Secretary, Bihar Staff Selection Commission, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate
		Mr. Manish Dhari Singh, Advocate
		Mr. Punit Kumar, Advocate
		Mr. Arya Achint, Advocate
For the State		Mr. Ajay Kumar, AC to GP 4
For the BPSC	:	Mr. Jitendra Kumar Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 22-02-2022

Heard learned counsel for respective parties.

In the instant petition, petitioners have prayed for the following relief(s):-

> *"(i) For issuance of writ in the nature of mandamus or any other appropriate for commanding the respondents to grant and to extend the benefit of old pension scheme and government provident fund instead of contributory pension scheme and contributory provident fund under the new pension scheme coming into force with effect from 01.09.2005.*
>
> *(ii) For holding that the petitioners having being appointed pursuant to advertisement no. 1304/2004 published by the Bihar Staff Selection in the daily news paper Hindustan, Patna edition dated 17.12.2004 is entitled for the grant of old pension scheme and government provident fund and the resolution dated 31.08.2005 issued by the department of finance, Patna, Bihar cannot be made applicable with respect to petitioners.*
>
> *(iii) For issuance of any other appropriate writs/orders or directions which yours lordships may deem fit and proper in the facts and circumstances of this case."*

Question for consideration in the present petition is whether the petitioners are entitled to the benefit of Old Pension Scheme for the purpose of fixation of pension after their retirement or not? Undisputed facts are that process of recruitment for the post of Lower Division Clerk pursuant to Advertisement No. 1304/2004 was notified on 17.12.2004. On the other hand, in publication of final result some of the petitioners were appointed on 28.01.2006 and on subsequent dates.

The State Government evolved a New Pension Scheme on 01.09.2005 it would be effective from 01.09.2005. Question for consideration is whether Old Pension Scheme or New Pension Scheme is applicable to those persons who were appointed beyond 01.09.2005, the date on which New Pension Scheme was introduced. The New Pension Scheme which was introduced on 01.09.2005 and it is effective from w.e.f. 01.09.2005 and it is prospective in nature. Prior to 01.09.2005 petitioners were not appointed. Pursuant to the Advertisement No. 1304/2004 some of the petitioners were appointed on 28.01.2006 and the pension has been introduced on 01.09.2005 in that event the petitioners cannot seek direction to apply Old Pension Scheme as it is not in vogue as on 28.01.2006. The petitioners have right to seek applicability of pension scheme only on 28.01.2006 the date on which they were appointed and subsequent dates. Right has been created subsequent to the introduction of New Pension Scheme on 01.09.2005, therefore, they have no right to claim Old Pension

Scheme. That apart the petitioners have not questioned the validity of date of introduction of New Pension Scheme.

In the light of these facts and circumstances, petitioners have not made out out a case. Hence, petition stands dismissed.

At this stage, Mrs. Nivedita Nirvikar, learned senior counsel relying on order dated 02.03.2021 passed in CWJC No. 7413 of 2017 (Annexure-6) stating that Old Pension Scheme is applicable to all such of those persons who were not appointed till 01.09.2005 also. What relief is required to be decided in the present petition is whether New Pension Scheme issued w.e.f. 01.09.2005 or not?

Undisputedly, petitioners have a vested and legal right to seek a particular pension scheme only as and when each of the petitioners were appointed. Petitioners were appointed after 01.09.2005, therefore, Old Pension Scheme cease to be in operation w.e.f. 01.09.2005. Hon'ble Apex Court in the case of **Nair Service Society Vs. T. Beermastan and Ors.** reported in **(2009) 5 SCC 545.** In paragraph 48 it has held as under:-

> *"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to particular service rules in the State governing that filed. Reservation provisions are enabling provisions, and different State*

> *Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to applied taking 20 vacancies as a block."*

In the light of Hon'ble Apex Court decision what is relevant is as on the date of claim as to whether the statutory rule existing that is required to be applied. In other words, State straight away cannot take note off judicial pronouncement. In the light of these facts and circumstances, petitioners relying on order dated 02.03.2021 passed in CWJC No. 7413 of 2017 (Annexure-6) cannot be appreciated. Accordingly, the aforesaid contention that the present matter is covered by order dated 02.03.2021 passed in CWJC No. 7413 of 2017 (Annexure-6) is hereby turned down.

It is necessary to examine the Bihar Pension Rules, 1950. Part I Rule 2 reads as under:-

> *"2. Except where otherwise provided these rules apply to all Government servants to whom the rules in the Bihar and Orissa Service Code apply."*

Rule 29 reads as under:-

> *"29. Pensionable service means service which qualifies the Government servant performing it to receive a pension from general revenues."*

Chapter VI relates to service qualifying for pension. Rule 58 reads as under:-

> *"58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-*
>
> *First-The service must be under Government.*
>
> *Second-The employment must be substantive and permanent.*
>
> *Third- The service must be paid by Government.*
>
> *These three conditions are fully explained in the following sub-sections."*

Similarly, Sub-Rule (2)-First Condition-Service under Government. Rule 60 reads as under:-

> *"60. The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government servants excluded from pension by this rule;*
>
> *(1) Employees of a municipality,*
>
> *(2) Employees of grant-in-aid schools and institutions.*
>
> *(3) Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance.*
>
> *Note 1.-If a Government servant has served partly (in a capacity which would have given his claim to pension. If the service had been paid from the general revenues), on the house hold establishment of the Governor, and partly on establishments paid from the general revenues, he is entitled from the general*

revenue, proportionate to the length of the service which has been so paid."

Sub-Rule (3)-Second Condition-Substantive and Permanent Employment.

(i) General

"61. Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

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**Regarding-Temporary Service counting for Pension.*

It has now been decided that temporary service or officiating service under the State Government when followed by permanency whether in the same or any other post should count in full for pension except in respect of--

(i) period of temporary service is non-pensionable establishment, and

(ii) period of service paid from contingencies.

The concession of counting officiating and temporary service in full for pension will be available to Government servants who are governed by the Old Pension Rules, or the Liberalized Pension Rules. [Notification No. 12928F...dated 4.9.1962. This has effect from 1.8.1962.]"

Chapter V relates to reckoning of service for pension. The petitioner's case do not fall under the aforesaid Chapter V.

Chapter VI-Conditions of Grant of Pensions. Under Section 1-Classification of Pensions petitioner's case is required to be examined under Rule 107(d) Retiring pensions vide Section v. The petitioner’s case do not fall under the aforesaid provision.

The Bihar Pension Rules, 1950 is replaced by New Pension Scheme. Therefore, the Bihar Pension Rules, 1950 ceased to be in operation as on 01.09.2005. The applicability clause namely Rule 2 is very specific that Rules applied to all Government servant to whom Rules in the Bihar and Orissa Rules Code apply. The petitioners have not appreciated that status of Government servant prior to 01.09.2005 and they have been appointed subsequent to 01.09.2005, therefore, repealed Rules cannot be applied to such of those persons who have been appointed w.e.f. 01.09.2005. In other words, they are not entitled to seek any relief of applicability of Bihar Pension Rules, 1950. Consequently, The Bihar Government Employees, Contributory Pension Scheme, 2005 which was churned out on 01.09.2005 is applicable to the petitioners with reference to their appointment read with Government statute acquired by each of the petitioners.

(P. B. Bajanthri, J)

Vikash/-

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