

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1525 of 2021

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Ramdev Prasad Yadav @ Ramdev Yadav, Son of Late Ramotar Yadav,
resident of village- Jogidih, Ward no. 12, Bariyarpur, P.S.- Cheriya
Bariyarpur, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Patna
2. The Principal Secretary, Finance Department, Government of Bihar, Patna
3. The Accountant General Bihar, Patna
4. The Education Officer, Begusarai

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 699 of 2021

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Ram Bilas Sharma, Son of Late Janak Sharma, Resident of Ward No. 5,
Basahi, P.S.- Cheriya Bariyarpur, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The Education Officer, Begusarai.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 1671 of 2021

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Devendra, Son of Late Parmeshwar Mahto, resident of Ward No- 9, Tara
Fafot, P.S. Khodawandpur, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The Education Officer, Begusarai.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 1823 of 2021

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Narendra Prasad Saini, Son of Late Ram Chandra Prasad Saini, Resident of
Ward No. 11, P.S.- Khodawandpur, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Patna
2. The Principal Secretary, Finance Department, Government of Bihar, Patna
3. The Accountant General, Bihar, Patna
4. The Education Officer, Begusarai

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3017 of 2021

Ripusudan Choudhary, Son of Late Ram Kehlawan Choudhary, resident of
Pachgama, P.S. Rosera, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The Education Officer, Begusarai.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1525 of 2021)

For the Petitioner/s : Mr. Madhav Kumar, Advocate

For the Respondent/s : Mr. Raghwendra Kumar, SC-22

(In Civil Writ Jurisdiction Case No. 699 of 2021)

For the Petitioner/s : Mr. Madhav Kumar, Advocate

For the Respondent/s : Ms. Bandana Singh, AC to SC-21

(In Civil Writ Jurisdiction Case No. 1671 of 2021)

For the Petitioner/s : Mr. Madhav Kumar, Advocate

For the Respondent/s : Ms. Namrata Singh, AC to GA-12

(In Civil Writ Jurisdiction Case No. 1823 of 2021)

For the Petitioner/s : Mr. Madhav Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Singh, GP-26

(In Civil Writ Jurisdiction Case No. 3017 of 2021)

For the Petitioner/s : Mr. Madhav Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Singh, GP-26

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 23-12-2022



Heard Mr. Madhav Kumar, learned counsel appearing on behalf of the petitioners in all the cases and respective counsels for the State respondents.

2. The issue involved in all the writ applications are identical, based on similar facts and circumstances, hence all the matters have been heard together and are being disposed of by the common order/judgment with the consent of the respective counsels appearing on behalf of the parties.

3. The petitioners are retired teachers, who superannuated from different Primary Schools prior to 01.01.2016 approached before this Court by filing writ applications seeking quashing of the order dated 02.06.2020 passed by the Principal Secretary, Finance Department whereby the representation filed by the petitioners pursuant to the order dated 13.02.2020 passed in C.W.J.C. No. 3116 of 2020, C.W.J.C. No. 1858 of 2020, C.W.J.C. No. 1854 of 2020, C.W.J.C. No. 1977 of 2020 and C.W.J.C. No. 3027 of 2020 whereby the claim of the petitioners for enhanced retiral and pensionary benefits have been rejected illegally and without assigning any reason.

4. It is not in dispute that the petitioners in the aforesaid writ applications were initially appointed to the post of Assistant Teachers in different Primary Schools/Middle Schools in different



Districts of the State of Bihar and after rendering unblemished services, they superannuated prior to 01.01.2016. It is the case of the petitioners that prior to 2016, the pay scale and grade pay of the petitioners was 6500-10500 + 4800/-.

5. On being superannuated, the petitioners have been allowed the admissible post retiral benefits. However, despite 7th Pay Revision with effect from 01.01.2016 when the petitioners have not been allowed the benefit and they have been put to huge loss in pension, as also they suffered loss of seniority on account of procedure followed for notional pay fixation in respect of pension revision benefits, they approached before this Court by filing separate writ applications with regard to their grievances for payment of pensionary benefits on account of 7th Pay revision. All the aforesaid writ applications were heard and disposed of by order dated 13.02.2020 directing the petitioners to file a detailed representation before the respondent nos. 2 and 3 with regard to their grievances and the respondents were directed to look into the matter and disposed of the same by passing reasoned order.

6. In compliance of the aforesaid order of learned coordinate Bench of this Court, the petitioners filed detailed representation before the concerned respondent nos. 2 and 3, which was duly considered by the Principal Secretary, Finance



Department, who turned down the claim of the petitioners and rejected the representations by the impugned order dated 02.06.2020, which are impugned in all the respective writ applications.

7. While assailing the impugned order dated 02.06.2020, learned counsel for the petitioners vehemently submits that while passing the impugned order, the respondent Principal Secretary, Finance Department, Government of Bihar, did not take into account the resolution issued by the Finance Department, Government of Bihar, as contained in Memo No. 630 dated 21.01.2010 to revise the pay scale with effect from 01.01.1996, in which the pensioners belonging to up till 31.12.2005 were put in the frame of pay band and grade pay, but at the time of consideration their pre-revised scale to revised pay band and grade pay, no attention was paid to the seniority in the pay band and the grade pay. He further submits that in the same pay band, the senior employees ought to have been given higher pay than that of their junior employees, but such aspect has not been taken into consideration causing anomaly and disparity amongst the pensioners. He also submits that the recommendation made by the 7th Pay Commission for the benefit to regular employee entitled increment during notional period, but neither the Central



Government nor the Government of Bihar followed the said recommendation. In other words, the petitioners have been deprived of pensionary benefits as in the wake of notional pay fixation on 01.01.2016, the enhancement in the salary with effect from 31.05.2006 to 31.12.2015 has not been incorporated, causing huge loss in pension amount. The learned counsel while arguing the matter vehemently relied upon the judgment of the Hon'ble Supreme Court in the case of **D.S. Nakara and others Vs. Union of India and others**, reported in **AIR 1983 SC 130** emphasizing the ratio that difference in the date of superannuation shall not encroached upon or impede the passage of seniority, as the same shall be violative of Articles 14 and 16 of the Constitution of India.

8. Per contra, learned counsel for the State uniformly submitted that pursuant to the order of this Court, the respective representation of the petitioners were duly considered by the Principal Secretary, Finance Department and the claim of the petitioners were rejected by a reasoned and speaking order after considering the resolution contained in Memo No. 755 dated 20.10.2017 of the Finance Department, Government of Bihar in the light of the recommendation made by the State Pay Commission for revision of pension and family pension. It is further submitted that in the light of the recommendation made by



the State Pay Commission and considering the recommendation of the 7th Central Pay Commission for revision of pension/family pension and specially the provisions contained in memo no. 38/37/2016- P&PW(A) dated 12.05.2017 of the Welfare Department, Government of India, two modes have been recommended for payment of revised pay/family pension for the employees, who superannuated prior to 01.01.2016. Out of the two modes, which have been recommended for revision of pension/family pension, the mode which determined the higher pension for the pensioner shall be accepted for the pensioner. He lastly submits that there is no discrimination with regard to payment of the pension of the pensioners/ family pensioners by the State Government and as the State Government has accepted the revised pension of the pensioners/family pensioners, who have retired before 01.01.2016 as per the resolution contained in Memo No. 755 dated 20.10.2017, the claim of the petitioners have been rejected, accordingly.

9. At this juncture, learned counsel for the petitioners while relying upon the judgment of the Hon'ble Supreme Court in the case of **D.S. Nakara** (supra) tried to impress upon this Court to submit that the Hon'ble Supreme Court in the aforesaid case has been pleased to hold "that the Central Government cannot pick out



a date from a hat and that is what it seems to have done in saying that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. In case before us, the eligibility criteria for being eligible for liberalised pension scheme have been picked out from where it is difficult to gather and no rationale is discernible nor one was attempted at the hearing. The ratio of the decision would squarely applies to the facts of this case.”

10. I have heard the learned counsel for the respective parties at length. Before adjudicating the matter, it would be relevant to quote relevant part of the Resolution No. 755 dated 20.10.2017 issued by the Finance Department, Government of Bihar, on the basis of which notional pay fixation of the petitioners has been done.

“2. राज्य वेतन आयोग की अनुशंसा के आलोक में पूर्ण विचारोपरांत दिनांक 01.01.2016 के पूर्व के पेंशनरों/परिवार पेंशनरों के पेंशन के पुनरीक्षण हेतु निम्न निदेश निर्गत किया जाता है—

दिनांक 01.01.2016 के पूर्व के पेंशनर/परिवार पेंशनर के पेंशन पुनरीक्षण हेतु सातवाँ केन्द्रीय वेतन आयोग के अनुशंसा एवं पेंशन तथा पेंशनर कल्याण विभाग, भारत सरकार के कार्यालय ज्ञापांक-38/37/2016-P & PW(A), दिनांक 12.05.2017 के प्रावधान को ध्यान में रखते हुए निम्नांकित दो साध्य (सूत्र) की अनुशंसा की गयी है एवं अनुशंसित किया गया है कि प्रति पेंशनर



के मामले में दोनों सूत्र में से जिस सूत्र से उच्चतर पेंशन निर्धारित होता है, उसे ही उस पेंशनर हेतु मान्य किया जाए—

(क) **प्रथम सूत्र—** संबंधित कर्मी की सेवानिवृत्ति/मृत्यु की तिथि को उनके वेतनमान/वेतन बैंड एवं ग्रेड—पे में प्राप्त मूल वेतन को सेवानिवृत्ति/मृत्यु की तिथि के पश्चात् सभी अनुवर्ती वेतन समिति की अनुशंसा के आलोक में प्रतिस्थानी वेतनमान/वेतन बैंड एवं ग्रेड—पे में वैचारिक निर्धारण करते हुए दिनांक 01.01.2016 को भुगतेय पेंशन/परिवार पेंशन का निर्धारण किया जाएगा।

(i) दिनांक 01.01.1981 से दिनांक 31.12.2005 तक सेवानिवृत्त/मृत कर्मियों को उनके मूल वेतन के आधार पर दिनांक 01.01.2016 को प्राप्तेय पेंशन राशि की गणना की जाएगी।

दो स्थितियाँ हो सकती हैं— एक जहाँ विशिष्ट वेतनमान एवं प्रक्रम का निर्धारण अंतिम वेतन के आधार पर किया जा सकता है तथा दूसरा जहाँ ऐसा संभव नहीं है।

दोनों ही स्थिति में पेंशन निर्धारण की प्रक्रिया संलग्न एनेक्चर—सी की तालिका—1 (जहाँ वेतनमान एवं प्रक्रम का विशिष्ट निर्धारण संभव है) एवं तालिका—2 (जहाँ वेतनमान एवं प्रक्रम का विशिष्ट निर्धारण संभव नहीं है) में दिनांक 01.01.2016 को अंकित वैचारिक मूल वेतन तथा एनेक्चर—डी में विहित प्रक्रिया/सूत्र के आधार पर की जायेगी, परन्तु जहाँ विशिष्ट वेतनमान एवं प्रक्रम की सूचना अनुपलब्ध है वहाँ अंतिम निर्धारण के पूर्व संबंधित कार्यालय से इसकी सूचना प्राप्त की जाएगी।

उदाहरण के लिए मान लेते हैं कि कोई व्यक्ति कार्यालय परिचारी (ग्रुप—डी) के पद से वर्ष 1982 में सेवानिवृत्त हुए थे। तत्समय उनका मूल वेतन रु0 360



(वेतनमान 350-425) के आधार पर पेंशन रु0 180 निर्धारित हुआ। अब दिनांक 01.01.2016 को एनेक्चर-सी के टेबल-1 के आधार पर रु0 360 को पुनरीक्षित वैचारिक वेतन रु0 18000/- है, दिनांक 01.01.2016 को पुनः इस पद हेतु न्यूनतम वेतन भी (ग्रेड पे-1800 लेवल-1) रु0 18000 है।

अतः एनेक्चर-डी के सूत्र के अनुसार दिनांक 01.01.2016 से पुनरीक्षित पेंशन = $18000 \times 180 / 360 =$ रु0 9000 होगा।

(यहाँ $X1 = 360$, $Y1 = 180$ तथा $N1 = 18000$)

इसी प्रकार परिवार पेंशन = $18000 \times 30 / 100 =$ रु0 5400 होगा।

लेकिन न्यूनतम पेंशन के प्रावधान को देखते हुए इसे भी रु0 9000 (नौ हजार) प्रतिमाह निर्धारित किया जाएगा। पेंशनर की आयु 80 वर्ष से अधिक होने की स्थिति अतिरिक्त पेंशन संबंधित प्रावधान लागू रहेंगे।

(ii) दिनांक 01.01.2006 से 31.12.2015 के बीच सेवानिवृत्त/मृत कर्मियों के संदर्भ में पेंशन का निर्धारण उन्हें प्राप्त अंतिम वेतन को 2.57 से गुणा कर 01.01.2016 को संगत पे-मैट्रिक्स में अनुमान्य वेतन के आधार पर किया जाएगा। एनेक्चर-बी के उदाहरणों में इसे स्पष्ट किया गया है।

(ख) **दूसरा सूत्र**— दिनांक 31.12.2015 को प्राप्तेय पेंशन राशि में 2.57 के स्थिर गुणक से गुणा कर पेंशन राशि का निर्धारण किया जाएगा।

उपर्युक्त दोनों सूत्र में से जो अधिक लाभकारी होगा, वही अंतिम पेंशन के रूप में स्वीकृत होगा, लेकिन 01.04.2017 के पूर्व की अवधि हेतु कोई बकाया राशि का भुगतान अनुमान्य नहीं होगा। अंतिम निर्धारण तक सूत्र 'ख' के तहत पेंशन का भुगतान जारी रहेगा।”



11. From bare reading of the aforesaid resolution, prima facie, it appears that for the purposes of notional pay fixation with effect from 01.01.2016, the fixation shall be made on the basis of last pay drawn so far the benefit of increment of pay is concerned, it should only be applicable to those, who are in service, as the increment of pay is admissible to the employees on account of their satisfactory services rendering during service period.

12. This Court also carefully gone through the impugned order passed by the respondent no.2, it has been rightly noted that retired employees and the employees in service cannot be kept in one category and allowed similar benefits. Furthermore, the pension revision order issued by the Government of India in the Department of Pension & Pensionary Welfare Department, as contained in order no. 38/37/2016- P&PW(A) dated 12.05.2017, there is no provision for taking into account the increments for the purposes of fixation of notional pay. Further, the reliance of the petitioners that the ratio laid down by the Hon'ble Supreme Court in the case of **D.S. Nakara** (supra) has been passed in a situation where the discrimination has been caused amongst the pensioners by fixing a cut off date. However, the fact involved in these writ applications are different where the applicability of the benefit of notional pay fixation by taking into account the increment of pay



is confined to the employees, who are in service and so far the pensioners are concerned, their notional pay fixation has been made on the basis of last pay drawn, as has been discussed in the foregoing paragraphs. This Court further feels that if the petitioners had any grievance with regard to the applicability of the resolution no. 755 dated 20.10.2017 issued by the Finance Department, the same may be challenged to the extent whereby the petitioners feel aggrieved, which has not been done so.

13. In view of the aforesaid circumstances and the position obtaining in law, all the writ applications are devoid of any merit and accordingly the same are dismissed.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
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