

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11323 of 2021

=====

Baijnath Ram Son of Late Bira Ram, Resident of Village-Bagwan, P.S.-
Garhani, District-Bhojpur (Ara).

... .. Petitioner/s

Versus

1. The Patna High Court through its Registrar General.
2. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Under Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna.
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Mukesh Kumar, Adv.
For the AG	:	Mr. Vivekanand Kumar, Adv.
For the State	:	Mr. Suman Kumar Jha, AC to AAG3
For Patna High Court	:	Mr. Sanjeev Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-02-2023

Heard Mr. Mukesh Kumar, learned advocate for
the petitioner and Mr. Sanjeev Kumar for the High Court.
The State is represented by Mr. Suman Kumar Jha. Mr.
Vivek Anand Kumar has appeared for the Accountant
General.

This writ petition has been filed by a retired
Judicial Officer seeking a direction that he be given his



pension in accordance with the old pension scheme instead of new contributory pension scheme, which came into force since 01.09.2005.

The contention of the petitioner is that he was appointed against the 24th Judicial Service Examination but, for some reason or the other, his appointment was notified after 01.09.2005 when the CPF scheme had already been introduced. Thus, the scheme of pension which was available at the time when the examination was conducted would be applicable to the case of the petitioner.

The aforementioned argument of the petitioner is self-defeating. The petitioner became successful only when four of the successful candidates in SC Category did not join, leaving the vacancy against which the petitioner was later recommended to be appointed. Thus, the notification of his appointment came on 07.03.2006 when the new CPF scheme was already in currency.



After having joined the service, the petitioner appears to have registered with the new pension scheme of (CPF Scheme) on 12.04.2010 and has sought such a direction only after his retirement. It also appears from the records that the petitioner contributed to the fund and withdrew it after his retirement.

We do not find any reason for the petitioner to agitate this cause again.

Mr. Mukesh Kumar, the learned advocate, but has drawn the attention of this Court to a judgment passed in the case of ***Ashok Kumar Sharma & Ors. Vs. The State of Bihar & Ors.; 2021 (1) PLJR 120*** in which it has been held that an appointee, for the purposes of the applicability of scheme of pension, is to be treated at par with the appointees against the advertisement of the particular year and whatever pension rules would apply to other successful candidates of such recruitment process, would apply to the claimant also, notwithstanding his appointment having



taken place later than the promulgation of the new pension scheme.

The facts of that case were totally different. In that case, the petitioner was a participant in the process against the advertisement of 1990 but, for some reason or the other, his appointment came to be confirmed only later. Nonetheless, before accepting the pension plan, he exercised his option for the old pension scheme which was made available to all such appointees under the 1990 advertisement.

In the case of the petitioner, no option for the old pension scheme was exercised, rather the petitioner appears to have voluntarily registered with the CPF scheme.

As noted above, he has contributed to the fund and has withdrawn the same after his retirement.

Mr. Sanjeev Kumar, learned counsel for the High Court has drawn our attention to a judgment of the Hon'ble Supreme Court reported in ***AIR 2007 SC 2023***



(KVS and Ors. Vs. Jaspal Kaur & Anr.) wherein it has been held that if an appointee has already chosen a particular pension scheme, he cannot be permitted, at a later stage, to opt for another scheme on the ground that he/she had not exercised her option.

The sum and substance of the contention of the advocates for all the opposite parties is that the petitioner had accepted the CPF plan and had withdrawn his contribution. After his retirement, he cannot be permitted to opt for another pension plan.

There is no merit in this petition.

The petition stands dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.02.2023
Transmission Date	

