

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19426 of 2021

1. Shankar Paswan Son of Late Ram Charan Paswan Resident of Ghurghura Sahshamal, P.S.- Tarabari, District- Araria.
2. Dhirendra Kumar Yadav Son of Late Khunai Lal Yadav Resident of Madhubani Bazar, P.S.- Khajanchi Hat, District- Purnea.
3. Rajendra Paswan Son of Late Jageshwar Paswan Resident of Rahika Tola Ward No. 17, P.S.- Araria, District- Araria.
4. Birendra Kumar Yadav Son of Late Mukti Prasad Yadav Resident of Kukraun, P.S.- Dhamdaha, District- Purnea.
5. Shiv Narayan Paswan Son of Late Sundar Das Resident of Rahika Tola, P.S.- Araria, District- Araria.
6. Arvind Kumar Choudhary Son of Rameshwar Choudhary Resident of Basantpur, Tiya Tola, P.S.- Araria, District- Araria.
7. Md. Zabir Son of Md. Tahir Resident of Kharaiya Basti, P.S.- Araria, District- Araria.
8. Madan Mohan Paswan Son of Shri Shanti Lal Paswan Resident of Dethua, P.S.- Sikti, District- Araria.
9. Dev Narayan Sah Son of Kusum Lal Sah Resident of Karahbari, P.S.- Sikti, District- Araria.
10. Md. Hasim Son of Ayub Resident of Lahna Kamaldaha, P.S.- Araria, District- Araria.
11. Baij Nath Manjhi Son of Gahan Lal Manjhi Resident of Kesara, P.S.- Jokihat, District- Araria.
12. Shyamlal Rajak Son of Dhaneshwar Rajak Resident of Simaria, P.S.- Jokihat, District- Araria.
13. Raghubansh Sah Son of Moolchand Sah Resident of Gaiyari, P.S.- Araria, District- Araria.
14. Shambhu Kumar Sah Son of Jitan Lal Sah Resident of Araria Bazar, Police Station and District- Araria.
15. Bibi Shabnam Ara Daughter of Bazauddin Resident of Sishouna, P.S.- Jokihat, District- Araria.
16. Ramnath Paswan Son of Late Harihar Paswan Resident of Ashram Chowk, P.S.- Araria, District- Araria.
17. Mumtaz Alam Son of Ishhaque Resident of Gaiyari, P.S.- Araria, District- Araria.
18. Shamhu Sada Son of Guneshwar Sada Resident of Pahushi, P.S.- Kursakata, District- Araria.
19. Jawahar Lal Das Son of Sri Saryug Das Resident of Hasanpur Araria, P.S.- Raniganj, District- Araria.
20. Surya Narayan Paswan Son of Madan Paswan Resident of Araria Bazar, Ward No. 12, Police Station and District- Araria.



21. Kalanand Ram Son of Janglu Ram Resident of Kharhat Gidhvas, P.S.- Raniganj, District- Araria.
22. Abdul Bahab Son of Md. Fakharuddin Resident of Sanjheli Rajokhar, P.S.- Raniganj, District- Araria.
23. Suresh Prasad Gupta Son of Late Mohan Lal Gupta Resident of Gosaipur, P.S.- Palasi, District- Araria.
24. Subash Kumar Yadav Son of Shri Bimlal Yadav Resident of Laxmipur, P.S.- Kursakata, District- Araria.
25. Shabir Alam Son of Md. Muslim Resident of Rampur Mohanpur, P.S.- Araria, District- Araria.
26. Upendra Ram Son of Feku Ram Resident of Badrahara, Majhua West Indrapuri Barhara, P.S.- Raniganj, District- Araria.
27. Dilip Kumar Rai Son of Jagdish Prasad Rai Resident of Hania, P.S.- Sikti, District- Araria.
28. Anil Kumar Dev Son of Chaturanand Lal Dev Resident of Bhatthabari, P.S.- Forbisganjh, District- Araria.
29. Vinod Kumar Paswan Son of Late Ram Krishna Pawwan Resident of Paikpar, P.S.- Bhargama, District- Araria.
30. Shambhu Paswan Son of Shri Devilal Paswan Resident of Indrapur, Barhara Ward No. 14, Bagulaha, P.S.- Raniganj, District- Araria.
31. Md. Arif Son of Ful Mohammad Resident of Kharaiya Basti, Ghat Tola, P.S.- Araria, District- Araria.
32. Dinesh Kumar Yadav Son of Ram Vilas Yadav Resident of Dhamiuli Pindi, P.S.- Deoria, District- Deoria (Uttar Pradesh).
33. Lalan Kumar Son of Laxman Prasad Resident of Araria Bazar, P.S.- Araria, District- Araria.
34. Rajendra Paswan Son of Dorika Lal Paswan Resident of Rampur, Ward No. 12, P.S.- Mohanpur, District- Araria.
35. Rajesh Paswan Son of Darap Lal Paswan Resident of Hanumant Nagar, Ward No.12, Near Gayatri Mandir, P.S.- Araria, District- Araria.
36. Mukul Kumar Rai Son of Late Maharaj Rai Resident of Kali Bazar, Araria Ward No. 29, P.S.- Araria, District- Araria.
37. Bhola Prasad Yadav Son of Late Domi Lal Yadav Resident of Bara Manikpur, Ward No. 11 (R.T. Mohan), P.S.- Simraha, District- Araria.
38. Bhola Sah Son of Ram Sharan Sah Resident of Kharhia Basti, P.W.D. Ward No. 29, P.S.- Araria, District- Araria.
39. Parmanand Mehta Son of Bindeshwari Mehta Resident of Rampur, Mehta Tola, Bansgara, P.S.- Forbisganj, District- Araria.
40. Suresh Paswan Son of Shri Yogendra Paswan Resident of Araria, Ward No. 22, P.S. and District- Araria.
41. Sudhir Kumar Yadav Son of Shri Puran Lal Yadav Resident of Gaiyari, Ward No.11, P.S.- Araria, District- Araria.
42. Suresh Kumar Thakur Son of Shri Maneshwar Thakur Resident of Gaiyari,



P.S.- Araria, District- Araria.

43. Yogendra Paswan Son of Bijli Paswan Resident of Derwa, P.S.- Sikti, District- Araria.
44. Ramanand Paswan Son of Raudi Paswan Resident of Ward No. 8, Omnagar, P.S.- Palasi, District- Araria.
45. Sahdev Manjhi Son of Shri Sundar Lal Manjhi Resident of Malduar, Ward No.11, Dehti Palasi, P.S.- Palasi, District- Araria.
46. Md. Mozahir Alam Son of Sarfuddin Resident of Gaiyari Sishouna, P.S.- Araria, District- Araria.
47. Hari Kishore Yadav Son of Late Domi Lal Yadav Resident of Bara Pashchim, Ward No. 10, R.T. Mohan, P.S.- Forbesganj, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Special Secretary to the Government, Department of Health, Government of Bihar, Patna.
4. The Collector, Araria-cum-President, District Appointment Committee, Araria.
5. The Deputy Development Commissioner, Araria.
6. The Civil Surgeon-cum-Chief Medical Officer, Araria.
7. The Additional Collector, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashank Shekhar Sinha, Advocate
For the Respondent/s : Mr. Mujtabaul Haque, GP 12
Mr. Vasant Vikas, AC to GP 12

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 21-06-2023

Heard learned counsels for the respective parties.

2. In the present writ petition, on 10.05.2023 following order was passed:



“Short question for consideration in the present petition is whether petitioner is entitled to Old Pension Scheme or New Pension Scheme. Undisputedly the petitioner was appointed in the year 2007. Whereas, the New Pension Scheme was introduced in the year 2005. On this point Apex Court in the case of ***State of Bihar and Ors. Vs. Rajmati Devi and Anr. (Civil Appeal No. 3900-3901 of 2022)*** decided on 20.05.2022, held that such of those appointees who are appointed subsequent to the introduction of New Pension Scheme they are not entitled to Old Pension Scheme.

In this regard, learned counsel for the petitioner is hereby directed to examine and make his submission on the next date of hearing.

Relist this matter on 21.06.2023.”

3. Today, learned counsel for the petitioners submitted that pursuant to the advertisement issued in the year 1997, certain appointment orders were issued in the year 1999 to the extent of appointing 40 candidates out of 119 candidates whose names were reflected in the panel. For remaining candidates appointment, there were certain litigations. Pursuant to the judicial order, petitioners were appointed in the year 2007. In this backdrop, question for consideration is whether petitioners are governed by Old Pension Scheme or New Pension Scheme.

4. Admittedly, petitioners were appointed in the year 2007 and as on the date of their appointment New Pension Scheme was



already introduced. The pension is required to be determined with reference to date of appointment and not date of advertisement in the light of various provisions of the Bihar Pension Rules.

5. Learned counsel for the petitioners submitted that several candidates have been extended benefit of Old Pension Scheme even though they were appointed after introduction of New Pension Scheme. If there is any error committed by the authorities and extended the benefit of Old Pension Scheme, it amounts to illegal action. Illegality cannot be perpetuated by the judicial forum as held by the Apex Court in the case of ***R. Muthukumar and Others vs. Chairman and Managing Director TANGEDCO and Others*** reported in **2022 SCC Online SC 151**.

6. That apart, it is to be noted that if the petitioners' appointment is by virtue of judicial order, in such an event petitioners' prayer should have been to appoint them with retrospective date, the date on which other similarly situated persons were appointed. In other words, if petitioners' appointment relates back prior to introduction of New Pension Scheme, in such an event, this Court would have appreciated that the petitioners are entitled to Old Pension Scheme. On the other hand, petitioners were appointed in the year 2007 and it is subsequent to the introduction of New Pension Scheme.



7. Moreover, the petitioners have not assailed the date of order of their appointment and to rectify the same prior to introduction of New Pension Scheme. In the light of these facts and circumstances read with the Apex Court decision in the case of *State of Bihar and Ors. Vs. Rajmati Devi and Anr.* (Civil Appeal No. 3900-3901 of 2022) decided on 20.05.2022, the petitioners have not made out a case.

8. Accordingly, writ petition stands dismissed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.06.2023
Transmission Date	NA

