

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1208 of 2022

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1. Umesh Prasad, Son of Late Rajendra Ray, resident of Mohalla - Jaitwarpur Nizamat, Police Station- Muffasil, District - Samastipur.
 2. Sangita Lomas, Wife of Dharmendra Kumar, resident of Village - Banbari Mora, Police Station- Bena, District - Nalanda.
 3. Manjesh Kumar Ishwar, Son of Krishna Kumar Ishwar, Resident of Village Bhroul, P.S. - Bachhwara, District - Begusarai.
 4. Awadhesh Sah, Son of Ram Sah, Resident of Village - Dabapur, P.S. Bhagwanpur, District- Begusarai.

... .. 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 General Administration, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance Govt. of Bihar, Patna.
4. The District, Magistrate, Begusarai.
5. The Director, Provident Fund Directorate, Patna.

... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. Jay Prakash Singh, Advocate Mr. Kumar Harsh, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT**

Date : 23-07-2024

1. By an advertisement, dated 26th of January, 1998,



the Bihar Public Service Commission (BPSC), conducted 1st Regional Competitive Examination, 1998 for the post of Class-III employee in the District Level Regional Offices in the pay-scale of Rs. 1200-1800/-. The Petitioners applied for their recruitment in Class-III posts and on being selected through written test, followed by oral interview, they were recommended for appointment to Class-III posts *vide* Memo No. 1037, dated 15th of January, 2003. Though some of the recommendees joined various departments, the Petitioners were not appointed in any of the Government Department. Being aggrieved, the Petitioners filed a writ petition, which was registered as ***C.W.J.C. No. 1281 of 2004***. The said writ petition was disposed of *vide* order, dated 16th of March, 2005, directing the District Magistrate-cum-Collector, Begusarai to consider the cases of the Petitioners for their appointment against general category vacancy forthwith and not later than a period of six weeks from the date of receipt/production of a copy of the order. In spite of the said order, having been passed, the Respondents failed and neglected to appoint the Petitioners in Class-III posts which compelled them to file a contempt petition against the Respondents. During the pendency of the content petition, appointment letters were issued to the Petitioners in the year 2006. In the meantime, New



Pension Scheme came into operation in the State of Bihar from 1st September, 2005.

2. It is contended on behalf of the Petitioners that had they been appointed on the basis of recommendation made by the BPSC with other selected candidates in the year 2003-2004, there would have been no occasion to put the Petitioners in New Pension Scheme. Under such circumstances, the Petitioners have prayed for issuance of writ in the nature of mandamus, commanding the Respondent Authorities to consider their appointment / joining notionally w.e.f. 15th of January, 2003, the date on which BPSC had recommended the names of the Petitioners as successful candidates for appointment to the posts of Class-III Non-Technical Employee (Revenue Karamchari) and thereafter to put the services of the Petitioners under Old Pension Scheme in place of Contributory Pension Scheme which has come into effect from 1st of September, 2005.

3 It is submitted by the learned Advocate for the Petitioners that as a result of negligence and laches on the part of the Respondents, the Petitioners' valuable right of acquiring seniority as well as being considered under Old Pension Scheme are going to be frustrated. If the Petitioners were appointed even after the judgement passed in *C.W.J.C. No. 1281 of 2004*, then



also, their seniority would have been protected and they were treated to be governed under the Old Pension Scheme.

4. In this regard the learned Advocate for the Petitioners refers to a decision of the Hon'ble Supreme Court in the case of *City & Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla & Ors.*, reported in (2009) 1 SCC 168.

5. Referring to paragraph no. 22 of the said report, it is submitted by the learned Advocate appearing on behalf of the Petitioners that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India is duty bound to take all the relevant factors into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex-parte writ of Mandamus, order or direction in a public law remedy. Further, while considering validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution. The



Court while exercising its jurisdiction under Article 226 is duty bound to consider whether : (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved; (b) petition reveals all material facts; (c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) person invoking the jurisdiction is guilty of unexplained delay and laches; (e) ex facie barred by any laws of Limitation; and (f) grant of relief is against public policy or barred by any valid law; and host of other factors. The Court in appropriate cases in its discretion may direct the State or its instrumentalities, as the case may be, to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions, always, are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.



6. The learned Advocate appearing on behalf of the Petitioners also referred to a decision of this Court in the case of ***Santosh Kumar & Ors. v. State of Bihar through the Home Secretary, Government of Bihar & Ors.***, reported in **2021 (2) PLJR 137**.

7. In the above-mentioned report, the Petitioners approached the High Court for a direction to the Respondents to grant the benefit of Old Pension Scheme as they were recruited as Constable pursuant to the Advertisement No. 01 of 2004 and in the same transaction, Constables were appointed in different districts, as the cut-off date was fixed on 31st of August, 2005 and they have been granted the benefit of Old Pension Scheme but the case of the Petitioners was delayed and they have been subjected to New Pension Scheme. The Petitioners challenged the action of the Respondents as arbitrary, unreasonable and discriminatory.

8. The Co-ordinate Bench held that the issue raised in the writ petition is no more *res integra* and identical issue was decided by this Court in ***C.W.J.C. No. 16468 of 2016*** and analogous cases. Similar issue in the case of ***Ganpati Singh v. State of Bihar & Ors.*** in ***C.W.J.C. No. 663 of 2010*** was set at rest *vide* order, dated 29th of August, 2011, which was affirmed



in ***L.P.A. No. 204 of 2014*** and SLP preferred against the order of the L.P.A. was dismissed in ***SLP (Civil) No. 35714 of 2016 (State of Bihar v. Ganpati Singh)***.

9. In the instant case, the seniority of the Petitioners ought to be considered notionally w.e.f. 15th of January, 2003 when they were recommended for their appointment. Had they been appointed on 15th of January, 2003 or any subsequent date prior to 1st of September, 2005, there would have been no occasion for the Petitioners to come under the purview of New Pension Scheme.

10. In view of what has been stated above and in order to maintain consistency, the present writ petition is allowed.

11. The Petitioners are held to be appointed notionally w.e.f. 15th of January, 2003 only for the purpose of being considered under Old Pension Scheme.

12. Notional appointment granted to these Petitioners, however, does not enure any benefit towards the claim of seniority of the Petitioners over other candidates, who joined the service before them.

13. The instant writ petition is, accordingly,



disposed of, on contest.

14. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	16.07.2022
Uploading Date	23.07.2024
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