

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13044 of 2014

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1. Ashok Singh S/o Late Chandra Deo Prasad Singh Resident of NIT Patna Campus, Patna-5, P.S. Pirbahore, District Patna.
 2. Md. Arshad, S/o Md. Yunus Resident of G. Lane, Pirbahore, Patna-6, P.S. Pirbahore, District Patna.
 - 3.1. Kumar Abhishek S/o Late Purendra Mishra Resident of Nagina Nagar, Kumhrar, P.S. Agam Kuan, District Patna.
 4. Vishwanath Mahto, S/o Late Ram Briksha Mahto Resident of NIT Campus, P.S. Pirbahore, District Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Human Resource Development, Department of Secondary and Higher Education, Shastri Bhawan, New Delhi.
2. The National Institute of Technology Patna, through its Director, N.I.T., Patna.
3. The Director, National Institute of Technology, Patna.
4. The Registrar, National Institute of Technology, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate
For the Respondent/s	:	Mr. Y. V. Giri, Sr. Advocate
		Mr. S. K. Giri, Advocate
For the UOI	:	Mr. Prakash Chandra Agrawal, Sr. CGC

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

Date : 29-11-2024

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

"(i) For issuance of an appropriate writ in quash the letter No. NITP/118/14 dated 3.06.2014 issued by the Registrar, NIT Patna whereby the petitioners have been directed to apply for getting Permanent Retirement Account Number (PRAN) in the NPS System failing which they will be subjected to the



disciplinary action contained in Annexure-16.

(ii) For issuance of an appropriate writ commanding the respondents to put the petitioner in a pensionable service as they are not a new appointees in the services of NIT, Patna rather their services have been absorbed in the NIT Patna w.e.f. 28.01.2004.

(iii) For issuance of an appropriate writ among the respondents to count periods rendered by the petitioners as casual employees for the purpose of putting them in a pensionable service in terms of Rule-13 of the Central Civil Services Pension Rules, 1972 read with the Government of India's Decision dated 14th May, 1968.

(iv) For any other relief or reliefs for which the petitioners are found to be entitled to in the law as well as on facts."

2. Short question for consideration is whether petitioners are entitled to have the benefit of old pension scheme or not? Petitioners were appointed in the erstwhile Bihar College of Engineering which was later on merged with NIT on 28.01.2004. On 28.01.2004, petitioners were working as a daily wager. On the very same day, on 28.01.2004 their services were regularized prospectively. Whereas the new pension scheme was introduced w.e.f. 01.01.2004. In this backdrop, the petitioners were appointed on regular basis subsequent to the introduction of new pension



scheme on 28.01.2004. Old pension rules or scheme is applicable to regular holder of the post.

3. Learned counsel for the petitioners vehemently contended that counting of past service for admissibility in old pension scheme, new pension scheme, pay protection and leave accumulation to All India Services Officers clarification *vide* Notification dated 04.11.2015 would come into the aid of the petitioners to the extent that they are entitled to claim benefit in old pension scheme or in new pension. In this regard, he has pointed out para 2(i) of the Notification dated 04.11.2015 (Annexure-21). It is necessary to reproduce Notification dated 04.11.2015 (Annexure-21) and it reads as under:-

" No. 25011/6/2014-AIS(II)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi-110001
Dated: 04/11/2015

OFFICE MEMORANDUM

Subject:-Counting of past service for admissibility in old pension scheme, new pension scheme, pay protection and leave accumulation to All India Services officers: clarification regarding.

I am directed to say that while introducing the New Pension Scheme from 01/01/2004, amendments to various existing rules including second proviso to Rule 1 of the All India Services (Death Cum



Retirement Benefits) Rules, 1958 were made whereby these rules became inapplicable to those appointed to All India Service and posts from 01/01/2004. The pension of the member of All India Services appointed on or after 01/01/2004 is regulated by the New Defined Contribution Pension Scheme (known as the New Pension Scheme), notified by the Ministry of Finance (Department of Economic Affairs) vide their Notification No.5/7/2003-ECB2 PR dated 22/12/2003 now rechristened as National Pension System as per Section 8 of Pension Fund Regulatory Development Authority Act, 2013. The guidelines for New Pension Scheme in respect of All India Services was issued by this Department vide letter No.25014/14/2001-AIS(II) dated 08/09/2009 in terms of the instruction/guidelines notified by the Ministry of Finance.

2. Therefore, in view of the above new and changed position, this Department has received references from the State Governments and member of services for clarification in regard to counting of past services for the purpose of pensionary benefits, pay protection and leave accumulation. The matter has been examined by this Department in consultation with the Ministry of Finance (Department of Expenditure) and Department of Pension and Pensioners' Welfare and has decided as under: -

(i) The member of All India Services who had been an employee in pensionable establishment viz. Central/State Governments or autonomous bodies as on 31/12/2003 and appointed to All India Services on or after 01/01/2004 with proper permission shall be covered under the old non-contribution pension scheme in terms of Office Memorandum No. 28/30/2004-P&PW(B) dated 28/10/2009, which has been made applicable Mutatis-Mutandis to members of All India Services by this Department vide letter No. 25014/1/2013-AIS(II) dated 18/3/2013. The pay protection and leave accumulation arising out of previous service would be admissible as per relevant rules of respective All India Services (Pay) Rules and All India Services (Leave) Rules, 1955.



[Underline Supplied]

(ii) Those under CPF etc will not be allowed entry into the old pension scheme on appointments from 01/01/2004.

(iii) The member of All India Services who were appointed to government service in the central/state governments or autonomous bodies, whether in a pensionable or non-pensionable establishment, on or after 01/01/2004 before being appointed to All India Services shall be governed by the New Pension Scheme. The pay protection and leave accumulation arising out of their previous service would be admissible as per the relevant rules of the respective All India Services (Pay) Rules and All India Services (Leave) Rules, 1955.

[Underline Supplied]

(iv) The admissibility of counting of past services for the purpose of benefits as mentioned at point (i) and (iii) above shall be subject to continuous service and technical resignation.

3. The State Governments are competent to determine the past service rendered by the member of service for such benefits as mentioned above. The service rendered by a member of All India Services before his appointment to the service under the Central Government or a State Government will count as continuous service for the said benefits subject to the fulfilment of the specific conditions provided in the All India Services (Leave) Rules, 1955 and the respective All India Services (Pay) Rules. Approval of the Central Government is not necessary for counting the previous service for such benefits. In such cases the Government of the State on whose cadre the member of service is borne/the Accountant General concerned, will have to take necessary action in consultation with the Central/Department or the State Government, if the officer had worked under the Central Government or another State Government, as the case may be, before joining the All India Services, to count such service as qualifying service for the aforesaid benefits. If any clarification is required or



condonation of break in service is involved, a reference may be sent to the Department of Personnel and Training in the case of members of the Indian Administrative Services, the Police Division of the Ministry of Home Affairs in the case of Indian Police Service and the Ministry of Environment, Forest and Climate Change in the case of members of Indian Forest Service.

Sd/-

(Rajiv Jain)

Under Secretary to the Government of India"

4. Reading of para 2(i) it appears that it is for those persons who were appointed in All India Services who had been an employee in pensionable establishment namely Central/State Government or autonomous bodies as on 31.12.2003 and appointed to All India Services on or after 01.01.2004.

5. Learned counsel for the petitioners is relying on Para 2(i) to the extent that petitioners were appointed in NIT on 28.01.2004, therefore, their services to be treated as All India Services. Even if it is autonomous body it is under the control of Govt. of India in that event petitioners are also entitled to have the benefit of Para 2(i) of the aforementioned clarification. It is to be noted that Para 2(i) is in respect of "and appointed to All India Services on or after 01.01.2004". There is no iota of material to show that All India Services/State Government or autonomous bodies as in the earlier clause, therefore, the later clause is restricted to only such of those employees who were working in a



pensionable establishment namely Central/State Governments or autonomous bodies as on 31.12.2003. No doubt, petitioners were working in autonomous body on 31.12.2003. However, petitioners were not appointed in All India Services like "appointed to All India Services on or after 01.01.2004". In the absence of word autonomous bodies and All India Services, the petitioners are not entitled to have the benefit of old pension scheme in view of the fact that they were regularized on 28.01.2004, the date on which which new pension scheme was introduced w.e.f. 01.01.2004.

6. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

Vikash/-

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

