

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13344 of 2024

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Mahendra Mahto Resident of village- Pakha, P.S.- Marhaura, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Water Resources Department, Sinchai Bhawan, Patna.
2. Chief Engineer, Irrigation Creation (Sinchai Srijan), Water Resources Department, Siwan.
3. Superintendent Engineer, Saran Canal Circle, Chapra.
4. Executive Engineer, Saran Canal Division, Marhaura (Saran).
5. Secretary, Finance Department, Government of Bihar, Main Secretariat, Patna.
6. District Magistrate, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Braj Kishore Singh, Adv.
For the State : Mr. Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 10-09-2024

Mother of the petitioner was a Class-IV employee in the Office of the Executive Engineer, Saran Canal Division, Marhaura (Saran), respondent no. 4 herein. She died in harness on 14th December, 2004.

2. The petitioner being the son of the deceased employee submitted an application for compassionate appointment on 16th March, 2005 before the Executive Engineer, Saran Canal Division, Marhaura (Saran), respondent no. 4. The Executive Engineer,



respondent no. 4 forwarded the said application to the Chief Engineer on 27th April, 2005. The Chief Engineer forwarded the same to the District Magistrate on 11th June, 2005 requesting him to put up the matter before the District Compassionate Appointment Committee. The District Compassionate Appointment Committee recommended the name of the petitioner for compassionate appointment on 25th February, 2006. Thereafter, on the basis of such recommendation the petitioner was appointed as a Group-D employee in the office of Executive Engineer, respondent no. 4, on 12th May, 2006.

3. Under such factual background, the issue involved in the instant writ petition is as to whether the petitioner would be governed under the Old Pension Scheme or New Pension Scheme. In order to pursue his claim that the petitioner is entitled to be governed under Old Pension Scheme, the learned Advocate on behalf of the petitioner refers to an order passed by the Finance Department, Government of Bihar on 28th November, 2023.

4. The order dated 28th November, 2023 relates to appointment of Government employee on the basis of old vacancy/Advertisement. It is stated that, if the selection process starts prior to 1st September, 2005, which is the cut off date for New Pension Scheme and the selected employees are engaged



after the said cut off date, due to administrative reasons or procedural errors, the said employees who joined even after 1st September, 2005 are entitled to be governed under Old Pension Scheme.

5. In paragraph-4 of the order, the Finance Department made certain conditions upon which the order shall be made applicable:-

(i) The date of vacancy and Advertisement should be before 1st September, 2005.

(ii) Date of recruitment should be completed before 1st September, 2005 and on the basis of merit list, some of the employees joined the service prior to 1st September, 2005, then only the employees joined subsequent to 1st September, 2005, are entitled to be governed under Old Pension Scheme.

6. In the instant case, the appointment of the petitioner was on compassionate ground. It is true that vacancy on the Group-D post was created on the death of her mother on 14th December, 2004. Process of recruitment by forwarding the application of the petitioner to the competent authority was initiated prior to 1st September, 2005, but he was recommended for appointment only on 25th February, 2006.



7. It is needless to say that in case of compassionate appointment there is no scope for being appointed on the basis of any Advertisement. However, on the question as to whether the petitioner should be governed under the Old Pension Scheme or New Pension Scheme, this Court is of the view that literal interpretation of the order issued by the Finance Department will cause injustice to the petitioner. The said order dated 28th November, 2023 ought to be considered with purposive interpretation. The purpose of the said notification dated 28th November, 2023 is that, when the recruitment process is initiated prior to 1st September, 2005, but due to administrative or procedural error appointment was not issued prior to 1st September, 2005, the selected candidates will be governed under Old Pension Scheme. When a person is employed on compassionate ground and the process of his recruitment was initiated prior to 1st September, 2005, but he was recommended for appointment by the District Compassionate Appointment Committee after the cut off date of 1st September, 2005, it is not the fault of the petitioner, it is the administrative laches, due to which the petitioner did not get the employment prior to 1st September, 2005. Therefore, interpreting the order, passed by the



Finance Department on above line, this Court is of the view that the petitioner is entitled to be governed by Old Pension Scheme.

9. The instant writ petition is accordingly allowed directing the petitioner to give option as to whether he intends to be governed under Old Pension Scheme or New Pension Scheme.

10. On the basis of his option, the respondent authorities shall do the needful, putting him under the appropriate pension Scheme, on the basis of the observation made in the instant order hereinabove.

11. In view of the above order, Annexure-5 dated 09.02.2024 is quashed and set aside.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

