

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13092 of 2024

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Dileep Kumar, S/o Late Mahesh Prasad Singh, R/o Mohalla Kalyani Colony,
Near Mitra Mandal Colony Phulwari, P.O. Anisabad District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Govt. of Bihar.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar.
3. The Additional Chief Secretary, Finance Department, Govt. of Bihar.
4. The Director, Secondary Education, Bihar, Patna.
5. The Regional Deputy Director, Patna Division, Patna.
6. The District Education Officer, Patna.
7. The Programme Officer (Establishment), Patna.
8. The Accountant General, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lala Sheshendra Narayan Rais, Advocate
For the State : Mr. Kameshwar Kumar, GP 17
For the Accountant General : Mrs. Ritika Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 09-09-2024

The instant writ petition is filed by the petitioner for
following reliefs:-

*“i. Issuance of a writ, writ(s),
order order(s) commanding the
respondent authorities to grant the
benefit of old pension scheme and
government provident fund to the
petitioner instead of contributory
pension scheme and contributory
provident fund under the new pension
scheme, treating the petitioner to be*



appointed in government service before 01.09.2005.

ii. Issuance of a writ, writ(s), order. order(s) commanding the respondent authorities to treat the petitioner to have been appointed prior to 01.09.2005 i.e., appointed on 24.02.2005 for the purposes of application of the service condition in regard to old pension scheme and government provident fund.

iii. For issuance of a writ, writ(s), order order(s) commanding the respondent authorities to pay all the consequential benefits under old pension scheme and government provident fund to the petitioner.

iv. Issuance of any other writ(s), order(s), or direction(s) as may be deemed fit and proper by this Hon'ble Court."

2. The case of the petitioner is that the father of the petitioner, namely, Mahesh Prasad Singh, since deceased was a Government teacher, Rasalpur, Fathua, Patna. He died in harness on 5th February 2024. Immediately after his death, the petitioner filed an application for a compassionate appointment. The District



Superintendent of Education, Patna *vide* letter no. 2849 dated 17th August 2004 recommended the petitioner for a compassionate appointment before the District Compassionate Appointment Committee, Patna. The District Compassionate Appointment Committee in its meeting dated 25th September 2004 recommended the name of the petitioner for appointment on the post of Clerk Grade-III. Pursuant to the said decision, the District Superintendent of Education, Patna recommended the name of the petitioner for appointment on the post of Clerk Grade III, in the Office of the Regional Deputy Director, Patna by letter no. 282 dated 24th February 2005. However, due to the delay and laches on the part of the respondent authorities, the petitioner received a formal appointment letter on 01st February 2007 and, accordingly, he joined his service.

3. As the petitioner joined his service on 01st February 2007, the respondent authorities decided that the petitioner would be governed under the New Pension Scheme, which was accepted by the Government of Bihar on 01st September 2005.

4. It is contended on behalf of the petitioner that he was recommended for an appointment much prior to 01st September 2005. The process of his recruitment on compassionate grounds



was initiated in the year 2004 itself, therefore, the petitioner is entitled to be governed under the Old Pension Scheme.

5. In support of his contention, as precedence, he refers to some decisions of this Court passed in CWJC No. 663 of 2010 which was affirmed in LPA No. 204 of 2014, CWJC No. 10901 of 2006, CWJC No. 20654 of 2010 and CWJC No. 1487 of 2015. Moreover, the petitioner refers to Annexure P/7 issued by the District Programme Officer, Patna on 30th March 2024, in respect of similarly situated candidates, permitting them to offer their choice as to whether they would be governed under the Old Pension Scheme or New Pension Scheme on the ground which runs thus:-

“6. जबकि जिला शिक्षा अधीक्षक , पटना के पत्रांक 282 दिनांक 24.02.2005 के द्वारा समर्पित नियुक्ति प्रस्ताव के बाद क्षेत्रीय शिक्षा उप निदेशक पटना प्रमंडल पटना द्वारा कई अनुकम्पा नियुक्ति की गयी जो 01.09.2005 के पूर्व की है एवं उन्हें पुरानी पेंशन योजना का लाभ दिया गया है। जिनकी सूची निम्न है:-

लिपिक का नाम	नियुक्ति तिथि
नैयर अंजुम	22.03.2005
तेज नारायण राय	19.04.2005
प्रियंक दिपक	25.08.2005

उक्त अंकित तथ्यों एवं विभागीय संकल्प के आदेश के आलोक में दिलीप कुमार लिपिक का दावा उचित एवं अनुमान्य है।”



7. Thus, it is found that the petitioner was recommended for appointment prior to 01st September 2005 but the formal letter of appointment was issued in 2007 due to delay and red-tapism in the Office of the respondents. As the process of his selection was initiated prior to 01st September 2005. Relying on the above-mentioned precedence, this Court holds that the petitioner is entitled to give option as to whether he would be governed by the Old Pension Scheme or the New Pension Scheme.

8. The respondent no. 04, the Director Secondary Education, Bihar, Patna is directed to act according to the order passed in the instant writ petition, and after obtaining the option from the petitioner, he will send the same to respondent no. 08, the Accountant General, Bihar to do the needful.

9. The instant writ petition is thus, disposed of on contest. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.09.2024
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