IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.218 of 2020

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1. Raghuvansh Prasad Sinha S/o Late Uday Narayan Singh R/o Mohalla- Sheikhpur, P.s.- Ahiyapur, District- Muzaffarpur-842002
2. Rameshwar Lal Karn S/o Late Matuki Lal Karn R/o Mohalla- Rambagh Chowk, Near Sanskrit College, P.s.- Mithanpura, District- Muzaffarpur-842002
3. Uma Kinkar Thakur S/o Late Bindeshawar Thakur R/o 959, Ward No. 31, Kachhi Pakki Road, Atardah, P.s.- Sadar, District- Muzaffarpur-842002
4. Bageshwari Nandan Kumar S/o Late Harbansh Kumar R/o 111, Marpa Mohan, Dewkuliya, P.s.- Fenahra, District- East Champaran-845430
5. Rajendra Chaudhary S/o Late Siphal Chaudhary R/o Bawan Bigha Road No. 12, Kanahauli, P.s.- Mithanpura, District- Muzaffarpur-842002
6. Chandreshwar Prasad Ray S/o Late Brahadev Ray R/o Road No. 8, Bawan Bigha, Kanahauli, P.s.- Mithanpura, District- Muzaffarpur-842002

7.1. Prabha Sinha, W/o Late Pradeep Kumar Bikal, R/o Gokhula Rupauli, P.S.- Paroo, District- Muzaffarpur- 843120.

8. Yugal Kishore Singh S/o Late Matuk Dhari Singh R/o Ward No. 7, Singahi Deoria, P.s.- Paroo, District- Muzaffarpur-843120
9. Suraj lal Chaudhari S/o Late Kashi Lal Chaudhari R/o Kasba Tola, P.s.- Paroo, District- Muzaffarpur-843112
10. Ram Chandra Singh S/o Late Rup Narayan Sharma R/o Bhasepur, Bishunpur, Ratwara, P.s.- Bajpatti, District- Sitamarhi-843333
11. Kapildeo Thakur S/o Late Ram Tapeshwar Thakur R/o amarnath Mandir Lane, Pankha Toli, Ramna, P.s.- Town, District- Muzaffarpur-842002
12. Baidyanath Poddar S/o Late Harihar Poddar R/o Sudama Sadan, Akharaghat Road, P.s.- Town, District- Muzaffarpur-842001
13. Gangotri Devi W/o Late Adya Nand Sharma @ Adha Nand Sharma R/o Chaudhary Tola, P.s.- Paroo, District- Muzaffarpur-843112
14. Nitya Nand Sharma S/o Late Sahjanand Sharma R/o 173, Rasulpur Jilani, Monjhalia Road, P.s.- Sadar, District- Muzaffarpur-842001

15.1. Ful Kumari Singh W/o Late Ram Balak Singh, R/o Akurahan, Harihar, P.S.- Kanti, District- Muzaffarpur- 843109

16. Uma Verma W/o Late Indra Kumar Verma R/o Rambag Chouri, P.s.- Mithanpura, District- Muzaffarpur-842002
17. Anand Mohan Sharma S/o Late Madan Mohan Sharma R/o Bishunpur Jaynarayan, P.s.- Maniari, District- Muzaffarpur-843119
18. Chandrakant Mishra S/o Late Jagdish Narayan Mishra R/o Hasanpur Bangahi, P.s.- Narsinghpur, District- Muzaffarpur-843105
19. Ram Niwas Trivedi S/o Late Ran Deni Trivedi R/o Matalupur, P.s.- Piar, District- Muzaffarpur-843115
20. Gauri Shankar Prasad Singh @ Gori Shankar Prasad Singh S/o Late Hari Prasad Singh R/o Village- Bibhutipur, P.s.- Narhan, District- Samastipur-

848211

21. Janardan Prasad Sharma S/o Late Ganga Prasad Sharma R/o Mohammadpur Niwas, Imlichatti, P.s.- Town, District- Muzaffarpur-842001
22. Rup Narayan Prasad Singh S/o Late Gonaur Singh R/o Gayaspur, P.s.- Paroo, District- Muzaffarpur-843107

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary Human Resource Department, Govt. of Bihar, Patna
3. The Principal Secretary Department of Finance, Govt. of Bihar, Patna
4. The Secretary (Expenditure) Department of Finance, Govt. of Bihar, Patna
5. The Director Secondary Education, Bihar, Patna
6. The Director Primary Education, Bihar, patna
7. The Regional Deputy Director of Education Tirhut Division, Muzaffarpur
8. The Accountant General Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Singh with Mr. Ajit Narayan Lal, Mr. Amit Narayan and Mr. Ashwani Kumar, Advocates
For the State	:	Mr. Madhaw Prasad Yadaw, GP-23
For the A.G., Bihar	:	Mr. Ram Kinker Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 18-10-2024

This Court has heard Mr. Arun Kumar Sinha, learned Advocate for the petitioners; Mr. Madhaw Prasad Yadaw, learned Government Pleader-23 representing the State and Mr. Ram Kinker Choubey, learned Advocate for the Accountant General, Bihar.

2. The petitioners before this Court are pensioners retired before 01.01.2006 and/or their legal heirs,

who have been getting family pension. The grievance of the petitioners is with respect to granting lower grade pay of Rs.4800 in Pay Band-2, while making notional replacement of scale with effect from 01.01.2006 at the time of revision of their pension/family pension whereas the petitioners are seeking declaration to hold them entitled to the higher grade pay of Rs.5400 in the same Pay Band-2, which has been subsequently fixed for the Graduate Trained Teachers of Government Secondary School in the revised Pay Band-2 by virtue of implementation of the 6th Pay Revision Commission with effect from 01.01.2006.

3. In the aforesaid premise, the petitioners invoke the jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondents to modify the resolution of the Finance Department of the Government of Bihar issued under Memo No. 22/2017-755 dated 20.10.2017 as also the clarificatory Note (i) appended to Rule 2(Ka) read with Table A.2 and A.3 of Annexure-A as well as Table 1 C.3 of Annexure-C of the aforesaid resolution dated 20.10.2017 so far it relates to revision/re-fixation of pension/family pension of the petitioners, who are retired employees of before 01.01.2006 or their legal heirs, on the basis of the lower grade

pay of Rs.4800 instead of fixation of their pension in the revised pay scale/pay band-2 in Pay Level-9 notionally on the basis of the recommendation of all the intervening Pay Commissions on the Grade Pay of Rs.5400 as on 01.01.2006 as has been done in the case of similarly situated pensioners/family pensioners who retired/died in between 01.01.2006 to 31.12.2015 vide clarificatory Note (ii) appended to Rule-2 (ka) of the afore noted resolution dated 20.10.2017. The petitioners are also aggrieved with the communication dated 22.01.2019 issued by the Finance Department, Government of Bihar whereby it has been communicated to the petitioners that there is no separate provision for revision of pension/family pension of the pre-retired 2006 pensioners/teachers in the aforesaid resolution dated 20.10.2017 which, in the humble submission, *sans substratum* in view of the implementation of the recommendation of the 6^{th} and 7^{th} Pay Revision Commission with effect from 01.01.2006 and 01.01.2016.

4. In support of the claim of the petitioners as noted hereinabove, the learned Advocate for the petitioners contended that as the class of the petitioners could not be divided for the purpose of entitlement and payment of pension

into those who retired by a certain date and those who retired thereafter, as the action of the respondents in such circumstances would not only cause hostile discrimination but is also violative of Article 14 of the Constitution of India and also the relevant provision of the Bihar Pension Rules. Both the class of the retired government servant retiring prior to cut off date of 01.01.2006 and thereafter remained similarly situated and belonged to the same class/service cadre holding the similar post in the same pay scale. Learned Advocate for the petitioners further contended that the action of the respondents is wholly unjustified in granting lower grade pay of Rs. 4800 to the petitioners who superannuated prior to 01.01.2006 in the pre-revised pay scale of Rs.7500-12000 and allowing higher grade pay of Rs.5400 to the junior colleagues to the petitioners who retired/died in between 01.01.2006 to 31.12.2015, in no case they are similarly situated as that of the petitioners and were holding the same pre-revised pay scale of Rs. 7500-12000 prior to the implementation of 6th Pay Commission with effect from 01.01.2006.

5. Drawing the attention of this Court to the resolution dated 20.10.2017, it is vehemently contended that two formulae (ka and kha) as has been set out by the

respondents along with the clarificatory note (i) and (ii) appended to Rule-2 of the afore-noted resolution are in consonance with the provision for revision of pay scale of the State Government employees with effect from 01.01.2006 by virtue of the implementation of their recommendation of 6th Pay Commission vide Finance Department resolution No. 16/09-630 dated 21.01.2010. Learned Advocate for the petitioners has also taken this Court to the Table of replacement pay scales/levels followed for notional pay fixation as on 01.01.2016 as contained in Anneuxre-A to Anneuxre-1 of the writ petition. Referring to the 3 tables as has been incorporated in the writ petition it is contended that the resolution dated 20.10.2017 regarding fixation of revised pay of the pre 2006 pensioners as well as pre 2016 pensioners is anomalous in nature and contrary to the policy decision taken by the State Government subsequent to the implementation of 6th and 7th Pay Revision Commission, in as much as contradictions are writ large in the matter of fixation of grade pay and pay level recommendation for the Graduate (Trained Teachers) as well as Graduate (Trained Headmaster) of the High School of the Government Nationalized School who were holding the pay scale of Rs. 7500-12000 at the time of their retirement on or before 31.12.2005 but have been discriminatorily and arbitrarily placed in the grade pay of Rs. 4800 with Pay Level-8 in the Pay Band-2, whereas their juniors who were also similarly situated like the petitioners by virtue of being placed in the same pay scale of Rs.7500-12000 who superannuated later in between 01.01.2006 to 31.12.2015 are getting higher grade pay of Rs.5400 on the strength of having been placed in the Pay Level-9 with the same Pay Band.

6. Adverting to the aforesaid facts, learned Advocate for the petitioners thus submitted that the similar issues, as involved in the present case, have come up for consideration before the Constitution Bench of the Hon’ble Supreme Court in the case of ***D.S. Nakara & Ors. vs. Union of India & Ors. [(1983) 1 SCC 305]*** and recently in the case of ***All Manipur Pensioners Association vs. The State of Manipur and Ors.*** [***(Civil Appeal No. 10857 of 2016): (2020) 14 SCC 625]*** Placing reliance upon the aforenoted judgments of the Hon’ble Supreme Court, it is lastly contended that it has now been fully settled that the fixation of a cut off date as a result of which equals are treated as unequals in the matter of fixation/revision of pension/family pension on account of implementation of the

recommendation of subsequent Pay Revision Commission is wholly arbitrary, unreasonable, irrational, discriminatory and violative of Article 14 of the Constitution of India.

7. *Per contra,* learned Government Pleader representing the State officials contended that the petitioners have already superannuated prior to 01.01.2006 and on the date of their superannuation they were getting the pay scale of Rs.7500 - 12000. The corresponding Grade Pay for the scale of Rs.7500-12000 with effect from 01.01.2006 is Rs. 4800 in the Pay Band-2 which is also prescribed under Table A-3 of resolution No. 755 dated 20.10.2017. Since the Grade Pay varies from scale to scale and before 2006 retirees from the scale of 7500-12000 were entitled for grant of Grade Pay of Rs.4800 with effect from 01.01.2006; thus in no circumstances they are entitled to claim the grade pay of Rs.5400. It is further contended that the fixation of pay scale etc. is the exclusive domain of the expert bodies; hence the petitioners have no *locus standi* to challenge the same. Moreover, the similar issue was the subject matter of CWJC No. 4649 of 2019, decided on 20.12.2019 [(***Yogendra*** **Prasad** ***vs. Magadh University & Ors.): (2020) 1 PLJR 243/(2020) 1 BLJ 424]*** with other analogous cases before the learned Division Bench of this

Court wherein the Court held that the teachers retired before 01.01.2006 form heterogeneous class and the State is empowered to adopt different yardstick for fixation of their pension. The benefit of corresponding pay revision in the revised pay scale is available to those who retired on or after 01.01.2006. The State is obliged to adopt the same modalities applicable to the State Government employees in the matter of pension fixation of retired teachers. The learned Division Bench of this Court also held that the notification no. 582 dated 17.07.2018 is not violative of Article 14 of the Constitution of India. However, the said decision cannot defeat the claim of full pension of the teachers retiring on or after 01.01.2006, after completed 20 years of service.

8. This Court has anxiously heard the learned Advocate for the respective parties and perused the materials available on record as also carefully gone through the judgment rendered by the learned Division Bench of this Court in the case of ***Yogendra Prasad*** (supra). The facts of the case in hand are not disputed that the petitioners are either pensioners retiring before 01.01.2006 or family pensioners who are aggrieved with the action of the respondent State officials whereby they have been allowed the Grade Pay of

Rs.4800 in PB-2 for the pre-revised pay scale of Rs. 7500-12000 and in contradiction to post 2006 pensioners have been allowed the Grade Pay of Rs.5400 in PB-2 in the similar pay scale.

9. There is no quarrel with regard to the settled position of law as enunciated by the Hon'ble Supreme court in the case of ***D.S. Nakara*** (supra) wherein the Constitution Bench of the Hon'ble Supreme Court ruled that the classification for the purpose of computation of pension from the homogeneous class of pensioners is arbitrary and discriminatory. However, such classification cannot be held to be impermissible if the class of pensioners form heterogeneous class. Similarly, in the case of ***All Manipur Pensioners Association*** (supra) the dispute was with regard to the decision of the Government of Manipur to increase fixed percentage of average emoluments, applicable to those who retired after 01.01.1996. The order aforesaid reveals that the pension calculated to employees who have retired before 01.01.1996 will be 50% of the average emoluments subject to a maximum of Rs.4500 but the said 50% has been increased to post 01.01.1996 retiree. The dispute as was resolved in the case of ***All Manipur Pensioners Association*** (supra) is not at all akin

to the present dispute in issue and the facts in both the cases are quite distinguishable.

10. From the careful reading of the decision rendered by the learned Division Bench of this Court in the case of ***Yogendra Prasad*** (supra), this Court finds that the issue involved therein was with regard to the discrimination between granting pensionary benefits to teachers retired after 01.01.2006 and before 23.09.2009 and those who retired after 23.09.2009.

11. The learned Division Bench of this Court in the case of ***Yogendra Prasad***(supra) has held at paragraph nos. 41 and 42 as follows:

> ***"41.*** *On consideration of the materials on record, the Court finds that teachers who retired after coming into fore the 6th PRC forms one homogeneous class and those who had already retired cannot be clubbed together as those retired before 1.1.2006 forms heterogeneous class, more so, there will be no end to the retrospectivity in the matter of extending similar treatment like the teachers who retired before 1.1.2006. In a given situation it may be extended to the teachers who retired availing 3rd or 4th PRC, in such situation the Court cannot extend benefit which was available to the teachers who retired after 1.1.2006. The Court does not find substance in the submission of Mr. Purushottam Jha.*
>
> ***Emphasis supplied***
>
> ***42.*** *In the result the Court holds and*

declare as follows:—

(i) Teachers retired after 1.1.2006 form one Homogeneous Class and entitled to identical treatment like all other teachers retired after 23.09.2009 for the purpose of entitlement of full pension on completion of 20 years of service. They are also entitled to pension fixation on the same line the teachers who retired after 23.09.2009.

(ii) Teachers retired before 1.1.2006 form Heterogeneous Class and as such the State can adopt different yardstick for fixation of their pension.

(iii) The benefit of corresponding pay revision in revised pay scale is available to only those retired on or after 1.1.2006.

(iv) The State is obliged to adopt the same modalities applicable to State Government employees in the matter of pension fixation of retired teachers.

(v) The State has competence to adopt the Central Government memorandum with modification considering financial constraints.

(vi) The Notification No. 852 dated 17.07.2019 is not violative of Article 14 of the Constitution of India. However, that decision cannot defeat the claim of full pension to teachers retiring on or after 1.1.2006, if completed 20 years service.

(vii) The Court has not gone into the validity of resolution No. 592 dated 6.3.2019 as it was neither argued nor pressed."

12. The learned Division Bench of this Court in uncertain terms held that the teachers retired after 01.01.2006 and before 23.09.2009 and after 23.09.2009 form one homogeneous class as they were continued in job after coming into force the 6th Pay Revision Commission and as such, the teachers who retired after coming into force the 6th pay Revision Commission cannot be treated differently on artificial classification of retirement before 23.09.2009 and after 23.09.2009. The learned Court further held that the State is competent to fix cut off date but fixation of cut off date must have rational basis and satisfy the requirement of the test of reasonableness. Placing reliance upon various judgments of the Apex Court, the learned Division Bench has further observed that the financial constraint may be a ground for fixation of a particular cut off date.

13. The learned Division Bench while considering the submission of one of the parties that he retired on 30.04.2004, i.e., before implementation of UGC pay scale i.e., 01.01.2006 has observed that if the contention of the petitioner is accepted that the revised pay scale and the corresponding fitment is applicable in the matter of grant of pension, then there is practical difficulty in fixing cut off date. The benefit of

revised pension if extended before 01.01.2006 in that situation one does not find to what further i.e., up to which date the teachers retiring would be entitled to the benefit of revised pension based on corresponding fitment in the revised pay scale. The learned Court finally comes to the conclusion that the fitment is available to those who retired after 01.01.2006 and it cannot be extended to any teachers who retired before 01.01.2006. However, it is made clear that if the State has taken a decision to grant benefit of basic pension to the teachers based on basic payment and according to pay, then the Court does not find any infirmities in the action of the respondents.

14. The learned Division Bench before parting with the final outcome has also taken note of that the decision rendered by the Constitution Bench in ***D.S. Nakara*** (supra) has been explained by two subsequent Constitution Bench decisions in ***Krishena Kumar Vs. Union of India, (1990) 4 SCC 207*** and ***Indian Ex-Services League Vs. Union of India, (1991) 2 SCC 104.*** Later on the Apex Court again considered the case of fixing cut off date for the purpose of judicial review with reference to D.S. Nakara in the case of Government of ***Andhra Pradesh & Ors. Vs. N. Subbarayudu***

& Ors. [(2008) 14 SCC 702], paragraph nos. 6 to 9 of the said judgment is guiding the matrix for the purpose of present case which is quoted herein below:

> *"6. No doubt in D.S. Nakara v. Union of India, (1983) 1 SCC 305 this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's Case (supra), as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal, (1983) 1 SCC 305.*
>
> *7. <u>There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.</u>*
>
> ***<u>Emphasis supplied</u>***
>
> *8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical) vide State of Bihar v. Ramjee Prasad, (1990) 3 SCC 368, Union of Indian v. Sudhir Kumar Jaiswal, (1994) 4 SCC 212 (vide para 5),*

Ramrao v. All India Backward Class Bank Employees Welfare Association, (2004) 2 SCC 76 (vide para 31), University Grants Commission v. Sadhana Chaudhary, (1996) 10 SCC 536, etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in Divisional Manager, Aravali Golf Club v. Chander Hass, 2008 (3) 3 JT 221 and in Government of Andhra Pradesh v. Smt. P. Laxmi Devi, 2008 (2) 8 JT 639 the Court must maintain judicial restraint in matters relating to the legislative or executive domain."

15. From the facts enumerated hereinabove and the law laid down by the learned Division Bench of this Court in the case of ***Yogendra Prasad*** (supra), this Court has no hesitation to bow down the mandate of the learned Division Bench that the teachers retired before 01.01.2006 and those who superannuated after 01.01.2006 form heterogeneous class and as such the State is well within its power to adopt the separate yardstick for fixation of their pension. The notification No. 582 dated 17.07.2018 issued by the Finance Department was put to challenge in CWJC No. 5192 of 2015

which was analogously heard with CWJC No. 4649 of 2019 ***Yogendra Prasad*** (supra) and other cases wherein the State took a decision that the provisions stipulated under office Memo No. 38/37/08-P and PW(A) dated 28.01.2013 issued by the Government of India shall not be applicable to the pensioners/family pensioners of pre 01.012006. The afore-noted notification is found to be not violative of Article 14 of the Constitution of India. However, it has only been clarified that the said decision cannot defeat the claim of full pension of teachers retiring on or after 01.01.2006, if completed 20 years of service.

16. In view of the discussions made hereinabove and the dictum of the learned Division Bench which squarely deals with the issue raised in the present writ petition, this Court finds no substance in the writ petition. Accordingly, the writ petition fails, sans any merit, stands dismissed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
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