

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16218 of 2021

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Kumar Shailesh Son of Late Laloo Prasad Singh, Resident of Flat No. 401,
Mansarovar Apartment, Baldwin Academy Lane, East Boring Canal Road,
Police Station- Buddha Colony, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary/Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Additional Chief Secretary/Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Chief Election Officer-cum-Principal Secretary, Election Department, Government of Bihar, Patna.
5. The Additional Chief Election Officer, Election Department, Government of Bihar, Patna.
6. The Deputy Secretary, Election Department, Government of Bihar, Patna.
7. The District Election Officer-cum-District Magistrate, Supaul.
8. The Sub-Divisional Officer, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pushkar Narain Shahi, Sr. Adv. Mr. Mritunjay Kumar, Adv.
For the Respondent/s	:	Dr. Mankeshwar Tiwari, AC to AAG-3
For the Election Department	:	Mr. Siddhartha Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 17-06-2025

This Court has heard Mr. Pushkar Narain Shahi, learned Senior Advocate along with Mr. Mritunjay Kumar, learned Advocate for the petitioner, Mr. Siddhartha Prasad, learned Advocate for the Election Department, Government of Bihar and Dr. Mankeshwar Tiwari, learned Advocate for the State.

2. The challenge in the present writ petition is made to



an order dated 09.08.2021, whereby the request of the petitioner for his pay fixation at par with candidates/appointees of 36th BPSC Batch, including, due increments, etc after granting exemption from departmental examination and further to grant him pensionary and other retiral benefits, treating his appointment to be effective with effect from other identical situated persons came to be turned down.

3. The petitioner also sought quashing of the letter dated 30.07.2020 issued by the Deputy Secretary, Election Department, Government of Bihar whereby exemption from appearing in the departmental examination in view of the departmental Notification No. 3127 dated 06.03.2018 has been refused. The petitioner, in fact precisely sought a direction upon the concerned respondent to treat him to be appointed in the year 1992, when the candidates who were successful at 36th BPSC examination had joined service or alternatively from the date prior to the date of joining of 37th BPSC examination, in view of the decision taken by the State Government duly notified vide Memo No. 8645 dated 05.08.2008 (Annexure-3 to the writ petition) and reiterated vide Memo No. 11294 dated 21.10.2008 (Annexure-4) and further to grant him all consequential monetary benefits.



4. Learned Senior Advocate while challenging the action of the respondents and the impugned orders has strenuously contended that due to wrongs committed by the respondent authorities, the petitioner was belatedly appointed on the post of Sub Election Officer vide order dated 05.07.2016 (Annexure-6); nonetheless, he ought to have been appointed on 01.06.1992 i.e. the date on which the last candidate of 36th Batch of BPSC was appointed in the cadre of Sub Election Officer. On bare perusal of the Government decisions dated 05.08.2008 and 21.10.2008, as noted hereinabove, it would demonstrate that 8 persons, including the petitioner, who had been wrongly deprived from their appointment on account of wrong implementation of reservation policy were required to be appointed with benefit of seniority and pay fixation and their date of appointment should have been effective from the date on which the last Officer of the 36th Batch of BPSC had received appointment.

5. Taking this Court through the various annexures appended to the writ petition, it is strenuously argued that the respondents cannot be allowed to take advantage of their own wrong by taking the stand that since the petitioner had not appeared at the departmental examination before attaining the



age of 50 years, he was not entitled to claim exemption. Admittedly, the wrong is on the part of the respondent authorities whereby delay has caused in appointment of the petitioner and thus, the rejection of the claim of the petitioner for exemption of passing departmental examination is not at all sustainable, in view of the fact that the petitioner was appointed vide Notification contained in Memo No. 2931 dated 05.07.2016 at the age of 56 years.

6. Mr. Shahi, learned Senior Advocate further contended that the respondent authorities ought to consider the case of the petitioner with compassion and sensitiveness in the facts of this case, where illegal appointment of as many as 8 persons have been saved and they were not thrown out of service by adopting the policy that the rightful claimants like the petitioner were to be given at least all due benefits from the date of their initial notional appointment i.e. 01.06.1992 so that no injustice would be meted out to any of the parties. Drawing the attention of this Court to Annexure-11 to the writ petition, it is further contended that other similarly situated persons, who were also deprived from their appointment in the year 1992 and received appointment subsequently have been extended the benefit of notional date of appointment, pay fixation etc in the



Department of Employment and Training, Government of Bihar. But surprisingly, discrimination has been caused and the petitioner has been deprived from identical benefits in complete violation of Article 14 of the Constitution of India.

7. Mr. Siddhartha Prasad, learned Advocate for the Election Department, Government of Bihar dispelling the aforementioned contention has submitted that the total service period of the petitioner is 4 years 1 month and 20 days and as per the pension rules, specifically Rules 145 (क), it is mandatory to work for at least 10 years in order to become eligible for pensionary benefits. Emphasizing the prescription, as provided under Rule 56 of the Bihar Pension Rules, 1950 it is contended that in any view of the matter, for computation of pension notional period of service cannot be considered.

8. Taking this Court through the impugned order, learned Advocate for the respondent State Election Department has urged that the claim of the petitioner for exemption of passing departmental examination was duly considered in the light of the order issued by the General Administration Department as contained in Memo No. 4674 dated 15.05.1992 and the petitioner was also asked as to whether he has taken attempt or even appeared in the examination or not because as



per the provisions laid down in the subject letter dated 15.05.1992, it has been made clear that exemption from the departmental examination will be given only to those employees, who have completed the age of 50 years and if they have appeared and failed, only in the said circumstances the benefit of exemption will be conferred to him. Since the petitioner has not fulfill the requirement of exemption, hence the claim of the petitioner for exemption in passing the departmental examination has rightly been refused. It is further clarified that any Gazetted Officer in order to get his/her first and second salary increment has to pass the required departmental examination. But admittedly the petitioner has not passed the examination nor he has appeared; he cannot get the benefit of promotion and increment at par with the employees of 36th Batch of BPSC.

9. To controvert the submission with regard to undue delay in causing appointment of the petitioner, Mr. Siddhartha Prasad, learned Advocate has submitted that though the General Administration Department vide its Memo No. 8645 dated 05.08.2008 and further vide Memo No. 11294 dated 21.10.2008 has taken a decision to appoint the petitioner and pursuant thereto, the General Administration Department vide its letter



contained in Memo No. 13431 dated 22.12.2008 directed the Secretary, BPSC to make available all the records of all the recommended applicants, including the petitioner to the concerned department so that their appointment formalities may be carried out. In the meanwhile, one Mirza Arif filed a Special Leave Petition before the Hon'ble Supreme Court in the year 2010 and the Hon'ble Apex Court has ordered to maintain status quo. The aforementioned SLP finally came to be disposed off on 03.02.2016 and subsequent thereto, the petitioner was duly appointed vide letter dated 05.07.2016. There is no delay and laches on the part of the respondent authorities in issuing the appointment letter in favour of the petitioner; moreover, the petitioner has only worked for a period of 4 years 1 month and 20 days. The order impugned rejecting the other consequential monetary benefits doesn't suffer from any illegality.

10. Dr. Mankeshwar Tiwari, learned Advocate for the State adopted the submissions advanced by the learned Advocate for the State Election Department and defended the impugned orders.

11. After having given anxious consideration to the submissions advanced by learned Advocate for the respective parties and on meticulous perusal of the materials available on



record, before parting with this case, some admitted facts which are noticed by this Court, are taken note of hereinbelow.

12. The petitioner, admittedly applied for 36th Combined Competitive Examination published by BPSC through advertisement dated 09.01.1989. Emerging as one of the successful candidates in written examination, the petitioner appeared for the Interview, but was declared unsuccessful in the final result published in August, 1990. It would be pertinent to state that at the time of advertisement in the year 1989, Reservation Policy of 10.11.1978 was in force; new reservation policy introduced vide Resolution dated 31.10.1990 allowing the reserved candidates in merit to be adjusted against the general category. The State Government directed for retrospective application of the new reservation policy vide its decision dated 07.01.1991, which direction was put to challenge in CWJC No. 1678 and 1338 of 1991.

13. The aforementioned writ petitions came to be allowed vide decision dated 23.05.1991. Subsequently another writ petition bearing CWJC No. 4472 of 1991, wherein identical challenge was made, also disposed off on similar terms vide decision dated 3.04.1992 with a direction to the respondents to ensure appointment by ignoring the subsequent decision of the



State Government. The litigation further continued in CWJC No. 10892 of 1994, which culminated into identical decision as aforesaid; however, the said decision was assailed in LPA No. 692 of 1999. A Division Bench of this Court vide its order dated 22.02.2000 directed either for creation of shadow posts or to push down wrongly selected candidates. On account of non compliance of the order of this Court, the matter giving rise to contempt proceeding in MJC No. 1938 of 2000.

14. The State respondents filed its supplementary show-cause, indicated BPSC revised recommendation for appointment of 8 persons, including the petitioner. The aforesaid decision of the Court led to issuance of Letter No. 330 dated 30.04.2004, conveyed decision to appoint 8 persons, including the petitioner, on the basis of 36th Combined Competitive Examination. Notwithstanding the aforesaid decision, the matter was remained pending and in the year 2008 a meeting was held under the Chairmanship of Chief Secretary on 22.08.2008 and in the light of the opinion of the Advocate General duly approved in principle by Hon'ble the Chief Minister, it was resolved to allow 9 existing candidates to continue on humanitarian ground with a further decision that 8 candidates, who had not been appointed, though were required to be



appointed; shadow post should be created for them with all the benefit of appointment from initial date along with seniority and pay fixation. It was made clear that no salary for the earlier period would be payable to the left out persons.

15. The aforementioned decision has further been clarified and communicated by Letter No. 9756 dated 05.10.2009 issued under the signature of Deputy Secretary to the Government of Bihar of Personnel and Administrative Reforms to the Principal Secretary and Secretary to various departments, including the Chief Election Commissioner, Election Department. The aforesaid letter also clarified notional appointment and seniority to the left out 8 persons, including the petitioner, with effect from the date of the last appointee of 36th Batch of BPSC.

16. It is also the admitted position that finally the petitioner was duly appointed on 05.07.2016 as Sub Election Officer vide Memo No. 2931 by treating the services of the petitioner as new appointment without giving the benefit of notional appointment with effect from the date on which the last candidate of 36th Batch of BPSC was appointed in the cadre of Sub Election Officer. Thus aggrieved, the petitioner immediately started corresponding to the department for making amendment in the appointment letters; however he did not find



any favour.

17. The question for consideration before this Court is as to whether the delay in appointment of the petitioner at respondents fault will lead to ineligibility of petitioner for pension and other consequential benefits at par with other similarly situated employees. In the facts and circumstances discussed hereinabove, when all the candidates had participated along with the petitioner pursuant to advertisement dated 09.01.1989 and on the recommendation made by the Commission, successful candidates were appointed, barring 8 of the candidates, who were though found eligible but on account of inaction and misinterpretation of the application of reservation policy, they have been deprived from their appointment and some of the persons, who were not even eligible for the appointment, they have been inducted. It is trite that if an appointment takes place through selection process by a recruiting agency like BPSC, the seniority of a candidate is to be governed by the merit position in the merit list and not by the date of joining.

18. This is not the case that the petitioner was not found eligible rather the case is otherwise that irrespective of the petitioner being eligible for appointment, he was unfortunately



ousted on account of the sheer inaction and non application of the mind of the State Government. The Court intervened in the matter and clarified the legal position as also the right of the petitioner and others to be appointed with other successful candidate of 36th Batch of BPSC. The respondent authorities having accepted their mistake took a conscious decision to appoint the petitioners. The Court obviously has no concern with the decision of the State Government taken on a humanitarian ground to continue with those, who have been appointed on account of retrospective application of the policy decision regarding reservation.

19. The law in this regard stands settled wherein the Apex Court in the case of *Kusheshwar Prasad Singh Vs. State of Bihar & Ors., (2007) 11 SCC 447* has held that one cannot be permitted to take under and unfair advantage of one's own wrong. He who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. The Apex Court has succinctly stated that a wrong doer ought not to be permitted to make a profit out of his own wrong. It would be worth to quote here the extract of a decision rendered by Justice Chagla and Justice Tendolkar in the case of *All India Groundnut Syndicate Ltd. Vs. Commr. of Income Tax,*



Bombay City; AIR 1954 Bom 232:-

“9. But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the Income-tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

20. In an identical matter, the Hon’ble Supreme Court in the case of ***P. Ranjitharaj Vs. State of Tamil Nadu and Ors., 2022 SCC Online SC 508*** after summarizing the case has observed that in the given circumstances, when all other candidates who had participated along with the appellants pursuant to advertisement dated 9th November, 2001, on the recommendations made by the Commission were appointed on 24th September, 2002 including those who are lower in the order of merit, there appears no reason for withholding the names of the present appellants and merely because they were appointed at a later point of time, would not deprive them from claiming to become a member of Tamil Nadu Pension Rules, 1978, which is



applicable to the employees who were appointed on or before 1st April, 2003.

21. This Court has also specifically noticed that other identically situated person, like the petitioner, who were also deprived from their rightful claim of appointment on account of wrong application of reservation policy and subsequently, when they have been appointed and their services were confirmed in the year 2013 in the Department of Employment and Training, Government of Bihar vide Memo No. 147 dated 29.10.2013 (Annexure-11), they have been accorded the benefit of notional date of appointment, pay fixation with effect from 01.04.1992. It does not stand to the reason as to why the petitioner has been deprived the identical benefit as has been extended to identically situated person, namely, Sanjay Kumar Sinha and Ajit Kumar Sinha, whose names also find mention in amongst the 8 candidates, including the petitioner. The specific contention of the petitioner of causing discrimination has not been even denied and the statement made in this regard in paragraph no. 9 of the writ petition has been said to be a matter or record in the counter affidavit filed on behalf of the respondent nos. 4 & 8.

22. The normal rule is that when a particular set of employees is given relief by the Court, all other identically



situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. The above noted principle reiterated and reaffirmed in the ***State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors., (2015) 1 SCC 347*** is mandated to be applied in service matters more emphatically as the service jurisprudence evolved by the Court from time-to-time postulates that all similarly situated persons should be treated similarly.

23. The doctrine of discrimination is founded upon existence of an enforceable right. If a person was discriminated and denied equality as some similarly situated persons had been given the same relief; Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent, at the one hand, has shown humanitarian approach while allowing the candidates to continue with their respective appointments, despite they might have been termed as ineligible, and on the contrary, the petitioner, who was eligible to be appointed, but could not be appointed because of the inaction on the part of the respondent authorities, has been deprived from his rightful claim.



24. So far the issue with regard to denial of exemption from departmental examination is concerned, the Court is of the opinion that once the petitioner has been deprived from his rightful claim to be appointed at par with the last candidate of the 36th Batch of BPSC, any resolution or the letter of the Personnel and Administrative Reforms Department necessitating an employee to pass the departmental examination would not be applicable to the case of the petitioner, since he was appointed at the age of 56 years and has allowed only to work for 4 years 1 month and 20 days. There is no dispute with regard to statutory stipulations, as prescribed under Rule 56 and 145 (क) of Bihar Pension Rules, 1950, but the facts of the case in hand is an exception, however, based on rightful entitlement and parity. The delay in petitioner's appointment in between 1992 to 2016 is attributable to the respondent authorities. They have committed wrong in the said period by not applying with the Court's direction and pursuant thereto, their conscious decision to appoint the petitioner after giving notional benefit of his appointment with due date and pay fixation and now they cannot be permitted to claim that the same benefit shall not be extended to the petitioner because of his delayed appointment. But to utter surprise to this Court that the identically situated



persons have been extended the benefit of notional date of appointment, pay fixation etc by treating their services to be appointed notionally with effect from 01.04.1992.

25. In view of the discussions made hereinabove, the issue answered in favour of the petitioner. In no circumstances, the petitioner shall be penalized on account of the fault of the respondent authorities.

26. Accordingly, this Court direct the respondent authorities to extend all the benefit, as has been accorded to identically situated persons, in terms of Annexure-11 to the writ petition, preferably within a period of four months, from the date of receipt/production of a copy of this order.

27. The writ petition stands allowed to the extent indicated hereinabove.

28. The parites shall bear their own cost respectively.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.06.2025
Transmission Date	NA

