

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1184 of 2024
In
Civil Writ Jurisdiction Case No.3460 of 2020

1. The State of Bihar through its Principal Secretary, Department of Water Resources, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Senior Accounts Officer, Accountant General, Veer Chand Patel Path, Patna, Bihar.

... .. Appellant/s

Versus

1. Prafulla Chandra Chaudhary Son of Late Gore Lal Chaudhary, Resident Ward No.-20, Sri Krishnapuri North, P.S.- Begusarai Town, Dist. Begusarai, Bihar.
2. Yogendra Prasad Yadav, Son Late Tez Naryan Yadav, Resident Lohia Nagar, Panhans, P.s.- Muffasil, Dist.- Begusarai, Bihar.
3. Sushil Kumar Sharma, Son Late Vindeshwari Sharma, Resident Dighi Kala Purvi, Hazaipur, P.S. Sadar, Vaishali, Bihar.
4. Suresh Kumar Rai, Son Late Jadunandan Rai, Resident Near Primary School, Dhuparchak, Alampur, Gonpura, Patna.
5. Shyam Babu Singh, Son Late Yamuna Singh, Resident House No.-1, Basera Colony, Road No.- 10, East Indrapuri, Keshri Nagar, Patna, Bihar.
6. Yashwant Kumar Chaudhary Son Ram Sudhir Chaudhari, Resident 102, Manglam Kunj Apartment, Ram Krishna Path, North S.K. Puri, Phulwari District- Patna, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar (Sr. Advocate) AAG-4
		Mr. Alok Kumar Rahi, AC to AAG-4
For the Respondent/s	:	Mr.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 01-12-2025

Heard Mr. Anjani Kumar (Senior Advocate) learned AAG-4 assisted with Mr. Alok Kumar Rahi, learned AC to AAG-4 for the appellants.



I.A. No. 01 of 2024

2. This interlocutory application has been filed for condoning the delay of about eight months and sixteen days in filing the present memo of appeal.

3. For the reasons as mentioned in the aforesaid interlocutory application, particularly in paragraph nos. 3, 4 5 and 6, I.A. No. 01 of 2024 is allowed.

L.P.A. No. 1184 of 2024

4. The present *intra court* appeal has been filed by the State of Bihar against the order/judgement dated 02.02.2024 passed in C.W.J.C. No. 3460 of 2020 whereby the Hon'ble Court has been pleased to allow the writ petition of the petitioners/respondents directing the State authority to grant them increment notionally to the recon their last pay drawn and retirement benefits shall be re-fix in accordance with the judgement passed by the learned Division Bench of this Court in the case of **Shiv Kumar Vs. The State of Bihar, reported in 2023(6) BLJ 392.**

5. Learned Senior counsel for the appellants submits that the Respondent Nos. 1, 4, 5 and 6 were appointed as Junior Engineer on 05.02.1979 in the Department of Water Resources Development. Respondent Nos. 2 and 3 superannuated on 30.06.2011, and all other respondents retired from service with effect from 30.06.2013. Learned Senior counsel for the appellants further submits that the



petitioners/respondents were retired in the year 2011 and 2013 respectively and they have claimed increment notionally to reckon their last pay drawn and retirement benefits shall be re-fixed. Learned Senior counsel for the appellants further submits that the petitioner/respondent nos. 1, 4, 5 and 6 have been retired on 30.06.2013 and petitioner/respondent nos. 2 and 3 have been retired on 30.06.2011 respectively and to decide the representation of the petitioners/respondents for payment of notional increment due to the petitioners/respondents after completion of one year of service from 01.07.2010 to 30.06.2011.

6. Learned Senior counsel for the appellants further submits that they had filed a counter affidavit in the writ petition stating therein that the writ petitioners/respondents claimed increment on the ground that they have completed full one year of service from 01.07.2012 to 30.06.2013, and 01.07.2010 to 30.06.2011 respectively, therefore they are entitled to get one increment which is due on 01.07.2013 and 01.07.2011 respectively.

Further, in the writ petition the writ petitioners/respondents claimed that the date of their superannuation should be treated as 01.07.2013 and 01.07.2011 instead of 30.06.2013 and 30.06.2011 respectively. However, in the counter affidavit in the writ petition, the State appellants have claimed that since the petitioners were not in service on 01.07.2013 and



01.07.2011 respectively, they cannot be given benefit of further increment in view of Clause 10 of the Resolution No. 630 dated 21.01.2010 of the Finance Department, Government of Bihar (Annexure-A to the counter affidavit in the writ petition).

7. We have heard the counsel for the appellants at length, the writ Court had passed the order on the basis of the judgment **reported in 2023(6) BLJ 392** in the case of **Shiv Kumar (supra)**, referring paragraph-4 of the aforesaid judgment which is quoted hereinbelow:

*“4. We would have normally referred the matter for consideration by a larger bench especially since, we are bound by a coordinate bench decision of this Court and the decisions of other High Courts have only a persuasive effect; however strong the persuasion and our inclination to follow the dictum of the other High Courts. That would not be necessary, if we notice the decision of the Hon’ble Supreme Court in **All India Judges Association vs. Union of India & Ors; 2023(4) BLJ 6 (SC)** in which similar recommendations have been upheld by the Hon’ble Supreme Court. We extract paragraph no. 53, 54 and 55 of the aforesaid judgment.*

53. Three sets of decisions had been rendered by different High Courts regarding this. The first view, which



was taken by the High Courts of Madhya Pradesh, Gujarat and Allahabad, is that when the increment becomes due the next day after retirement, the employee ought not to be denied the benefit of the increment for the purpose of pay. The second view, which was taken by the High Courts of Madras, Orissa and Delhi is that the increment would accrue to officers only for the purpose of pension alone. The third view, taken by the Andhra Pradesh, Himachal Pradesh and Rajasthan High Courts is that the increment cannot be granted to the officers.

54. The law has now been settled by this Court in a recent judgment Director, KPTCL vs. CP Mundinamani. This Court approved the judgment of the High Court of Allahabad's view in Nand Vijay Singh vs. Union of India it was held:-

“24. ... In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory service of a year so that the scheme is not construed in a manner that



it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India.”

55. In such circumstances, the recommendations of the Commission in so far as it notionally grants the increment for the purposes of pension is completely justified. As a consequence of the acceptance of the recommendation, the calculation of pension must notionally include the increment for the purposes of calculation of pension. This will also obviate any confusion. It is therefore directed that the High Courts amend the applicable rule to state that the increment which becomes due to the judicial officer on the day after his retirement may be notionally included in the calculation of his pension as his last pay, subject to the vertical ceiling of Rs. 2,24,100/-.”

8. From perusal of paragraph-4 of the aforesaid judgment, it transpires that the learned Division Bench of this Court has passed the order on the basis of the judgment rendered by the Hon’ble Supreme Court in the case of All India Judges Association Vs. Union of India & Others, reported in 2023 (4) BLJ SC-6, referring paragraph nos. 53, 54 and 55 which is quoted hereinbelow:

“53. Three sets of decisions had been rendered by different High Courts regarding this. The first view, which was taken by the High Courts of Madhya Pradesh,



Gujarat and Allahabad, is that when the increment becomes due the next day after retirement, the employee ought not to be denied the benefit of the increment for the purpose of pay. The second view, which was taken by the High Courts of Madras, Orissa and Delhi is that the increment would accrue to officers only for the purpose of pension alone. The third view, taken by the Andhra Pradesh, Himachal Pradesh and Rajasthan High Courts is that the increment cannot be granted to the officers.

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9. From perusal of the aforesaid judgement, it appears that Hon'ble Apex Court in paragraph nos. 53, 54 and 55 of the aforesaid judgement (All India Judges Association) (supra) has held that *"In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable losses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India"*.



10. In view of the aforesaid, we do not find any illegality and infirmity in the order of the writ Court, no case is made out for interference in the matter.

11. There is no merit in the present appeal and accordingly, LPA stands dismissed.

12. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, ACJ)

I agree.

Ibrar//-

(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
CAV DATE	21.11.2025
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