

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1149 of 2023
In
Civil Writ Jurisdiction Case No.24260 of 2019

Siya Ram Jha S/o late Deonarayan jha Resident of janta Flat no .ER- 176
Bahadurpur housing colony bhutnath road P.s agam kuan District Patna
present resident of sitjain chak Bairiya PS- Sampatchak District Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Vice Chancellor, Patna University, Patna.
4. The Registrar, Patna University, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sudhir Kumar, Advocate
For Respondents 3&4	:	Mr. Mrigank Mauli, Sr. Advocate
		Mr. Manish Dhari Singh, Advocate
For the State	:	Mr. Sarvesh Kr. Singh, AAG-13

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 08-01-2026 Heard learned counsel for the parties.

2. The present intra court appeal has been preferred against the order dated 22.08.2023 passed in C.W.J.C. No. 24260 of 2019, whereby the learned Single Judge has disposed the writ petition and observed as under:

“4. So far as the issue relating to grant of pension of the petitioner is concerned, the same requires challenge to the notification dated 07.08.2020, which has been made retrospective w.e.f. 01.09.2005.”

3. CWJC No. 24260 of 2019 was filed for granting of post retrial benefits to be paid in accordance with law. The petitioner was granted pensionary and retiral benefits under the



New Pension Scheme. The petitioner however claims that he should be given benefit under the Old Pension Scheme. The Writ Petition had been filed for the following reliefs:

“(i) For directing the respondents to pay the retiral benefits i.e. Pension, Gratuity Leave Encashment, Part of G.P.F. with up-to-date statutory interest.

(ii) For directing the respondents to pay the difference of salary from June, 2006 to May, 2014 and the benefits of A.C.P. from 2016.

(iii) For directing the respondents to provide the calculation chart of G.P.F. so that the petitioner may verify the actual due amount of G.P.F.

(iv) For necessary order/direction for which the petitioner is found entitled under the law and in the facts and circumstances of the case.”

4. The learned counsel for the appellant submits that the appellant's entitlement to pension had already been decided in CWJC No. 3155 of 2017 and could not be nullified by a subsequent notification. It was further submitted that the notification dated 07.08.2020 is inapplicable as appellant's right to pension had already been decided and the judgment by learned Single Judge is not sustainable in the eyes of law.

5. The learned counsel for the respondents submit that the learned Single Judge had granted liberty to the appellant to challenge the notification dated 07.08.2020 and thus, the appeal



is devoid of any merits, and the order of the learned Single Judge requires no interference.

6. It is pertinent to consider the relevant paragraph of the supplementary counter affidavit filed on behalf of respondent No. 02 in the writ petition, which is as under:-

"9. That it is humbly stated that the State of Bihar has preferred an Intra Court Appeal against the order under contempt bearing LPA No.2159 of 2016 (The State of Bihar Vs Birendra Kumar Gupta & Ors.) and the Hon'ble Division Bench of this Hon'ble court vide order dated 08.01.2018 gave following direction, while dismissing the appeal;

"The learned Single Judge has rightly taken a view that corresponding changes and amendments have to be brought about by the University in conformity with the Bihar Pension Rule and it cannot be an automatic kind of application to the amended provisions in the Bihar Pension Rules. In fact, instead of wasting judicial time and energy on this litigation, the University is free to bring about changes even now...."

10. That it is humbly stated the Hon'ble Chancellor of the Universities, in view of the aforesaid liberty granted by the Hon'ble Division Bench of the Hon'ble Patna High Court judgment dated 08.01.2018 passed in LPA No.2159 of 2016 (The State of Bihar Vs Birendra Kumar Gupta & Ors.), has been pleaded to notify one Statute for New Contributory Pension Scheme as applicable to the employees who are



appointed on or after 01.09.2005 in the universities and their Constituent Colleges, vide notification contained in memo no.1445/GS(1) dated 07.08.2020. The Statute is being brought on record for the better appreciation of this fact.

11. That it is important to mention here that earlier, State Government implemented the new pension scheme through executive order, which was disallowed by this Hon'ble court and this Hon'ble court, granted liberty to make necessary amendment in the relevant Statute to implement the new pension scheme.

12. That it is humbly stated that Clause-1(iii) of the aforesaid Statute has been made effective from 01.09.2005. Clause-2 of the said Statute prescribe its application which is as follows;

2. Application

The provision of this Statute shall apply to all teachers, officers, and other employees of the University who have been appointed on or after 01.09.2005, by a regular manner on posts sanctioned or approved by the State Government by the due process of appointment.

13. That it is humbly stated that in view of the aforesaid Statute, the petitioner comes under the purview of new pension scheme.”

7. Upon perusal of materials on record it is apparent that as per the notification prevalent, the respondent university has rightly given the benefits of the New Pension Scheme to the petitioner. The services of the petitioner have been regularized in the year 2006, and the notification clearly states that those



regularized after 01.09.2005 have to be covered under the New Pension Scheme.

8. Therefore the appellant-petitioner is covered under the aforesaid notification dated 07.08.2020. As such the effective remedy available to the petitioner is challenging the said notification itself, which was not done by the writ petitioner. The learned Single Judge thus rightly disposed of the matter and granted liberty to the writ petitioner to challenge the notification dated 07.08.2020.

9. Considering the discussions made above and the materials on record, we are of the considered opinion that there is no illegality or perversity in the order of the learned Single Judge. If so advised, the appellant/petitioner may avail the remedy as indicated by the learned Single Judge in paragraph-4 of the order under challenge, as referred above.

10. The present appeal is accordingly dismissed.

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

(Sudhir Singh, J)

(Praveen Kumar, J)

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