

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.289 of 2025

In

Civil Writ Jurisdiction Case No.12495 of 2024

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
 2. The Principal Secretary, General Administration Department, Government of Bihar.
 3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
 4. The Principal Secretary, Co-operative Department, Government of Bihar, Patna.

... .. Appellants

Versus

1. Amitabh Kumar Gupta, S/o Late Sachidanand Prasad, Resident of Near Police Adda, Marwari Mohalla, P.S. - Gopalganj Town, District - Gopalganj, Bihar - 841428.
2. The Director, General Provident Fund, Bihar, Patna.
3. The Accountant General, Bihar, Patna.

... .. Respondents

Appearance :

For the Appellants : Mr. Sita Ram Yadav, G.P.-16
Mr. Jitendra Kumar (A.C. to G.P.-16)

For Respondent No.1 : Mr. Kumar Kaushik, Advocate
Mr. Sambhav Gupta, Advocate
Mrs. Namrata Dubey, Advocate
Mr. Kaushik Sagar, Advocate

For the Accountant General, Bihar: Mr. C. Swaroop, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-04-2026

This Letters Patent Appeal has been filed by the State of Bihar challenging the order dated 30.08.2024 passed by the learned Single Judge in C.W.J.C. No. 12495 of 2024 setting aside the impugned order dated 18th March, 2024, passed by the Principal Secretary, General Administration Department, Government of Bihar as well as giving liberty to the writ petitioner to exercise his option as to whether he wanted to be governed under Old Pension Scheme or New Pension Scheme, within a period of 15 days from the date of passing of the order.

2. The writ petitioner approached this Court by filing the aforesaid writ petition seeking for the following relief(s):

“i. For issuance of an order, direction or a writ of certiorari for quashing and setting aside the order contained in Memo No. 4685 dated 18.03.2024 issued under the signature of respondent no. 2 whereby and where under the respondent authorities have rejected the representation filed by the petitioner to grant the benefit of Old Pension Scheme under the Bihar Pension Rules, 1950 in place of New Contributory Pension Funds Scheme as the writ petitioner was initially appointed District Audit Officer on 04.05.2005 prior to his selection and appointment to the post of Deputy Collector on 14.08.2009 and therefore ought to have been covered under



the Old Pension Scheme.

- ii. *For issuance of an order, direction or a writ of mandamus for directing the respondent authorities to grant the benefit of Old Pension Scheme under the Bihar Pension Rules, 1950 to the writ petitioner in place of New Contributory Pension Funds Scheme as the writ petitioner was initially appointed District Audit Officer on 04.05.2005 prior to his selection and appointment to the post of Deputy Collector on 14.08.2009.*
- iii. *For issuance of an order, direction or a writ of mandamus for directing the respondent authorities to ensure opening of G.P.F. Account and deduction of G.P.F. Account from the date of appointment of the writ petitioner after deducting the contributions made under the New Pension Scheme.”*

3. The writ petitioner had initially participated in the selection process conducted by Uttar Pradesh Public Service Commission in the year 2001 and was selected and appointed as District Minority Welfare Officer vide order dated 16.08.2004 and submitted his joining on 09.09.2004. Thereafter, he participated in the 44th Combined Competitive Examination conducted by the Bihar Public Service Commission for which advertisement was issued on 09.07.2000 and he was declared successful and appointed to the post of District Audit Officer vide Memo No. 831 dated 04.05.2005. Twenty candidates were selected to such post and the writ petitioner's rank was 11. The



writ petitioner, on receiving the appointment order dated 04.05.2005, requested the Government of Bihar vide letter dated 16.05.2005 for two months' time to join as he was already in Government service and it would take some time for him to be relieved. The relieving order was issued by the Department of Minority Welfare, Government of Uttar Pradesh on 16.06.2005 since the writ petitioner was interested to join the services under the Government of Bihar. The writ petitioner was directed to hand over the charges of the District Minority Welfare Officer, Basti, which he handed over and then sought for one month's time vide letter dated 18.07.2005 due to personal and family reasons.

The writ petitioner, in the meantime, was also selected for appearing in the 1st Combined Civil Services Mains Examination, 2003, conducted by the Jharkhand Public Service Commission which was supposed to be conducted from 23.06.2005 to 02.07.2005. The writ petitioner thereafter sought for another extension from the Co-operative Department, Government of Bihar for joining until September, 2005 vide letter dated 13.08.2005 on the ground that he had to participate in the 46th Combined Competitive (Main) Examination starting from 03.09.2005. His request for extension of time was accepted



and he was allowed time until 30.09.2005 to submit his joining report and ultimately the writ petitioner submitted his joining report in the office of the District Audit Officer, Co-operative Societies, Muzaffarpur on 16.09.2005.

In the meanwhile, the Government of Bihar issued a resolution on 31.08.2005 which prescribed that the Government had taken a decision to adopt the New Pension Scheme in respect of the Government Servants appointed on/after 01.09.2005 and the said resolution was made applicable to the Government Servants who have been appointed on/after 01.09.2005.

The writ petitioner requested the Director, General Provident Fund for his inclusion under the Old Pension Scheme vide letter dated 05.05.2006. However, he was included under the New Pension Scheme while his application for Old Pension Scheme was pending for consideration before the respondents.

It is the case of the writ petitioner that all the persons who were junior to him in the seniority list were allowed the benefits of Old Pension Scheme and in the meantime, the writ petitioner participated in the 47th Combined Competitive Examination conducted by the Bihar Public Service Commission and was declared successful and appointed to the



post of Deputy Collector vide notification dated 14.08.2009 and he was posted at Siwan for training. The writ petitioner was relieved from his services as District Audit Officer vide notification contained in Memo No. 3558 dated 01.09.2009 to enable him to join the post of Deputy Collector and the writ petitioner joined the said post of Deputy Collector on 02.09.2009.

The writ petitioner, upon joining, requested for counting his prior service in the Government of Bihar on the post of District Audit Officer, Co-operative Societies in the Co-operative Department and for amalgamation of the two services, which were under the same Government, which was allowed and the services of writ petitioner rendered on the post of District Audit Officer and Deputy Collector were amalgamated and the period of prior service on the post of District Audit Officer under the New Pension Scheme was directed to be counted for the purpose of death-cum-retirement gratuity and leave encashment and all other post-retirement benefits.

Aggrieved with the inaction of the respondents, the writ petitioner filed a representation on 28.11.2022 requesting the General Administration Department to allow him the benefit of Old Pension Scheme, which was forwarded from the office of



District Magistrate, Kishanganj to the Principal Secretary, General Administration Department on 07.12.2022. In his representation, he took a specific plea that New Pension Scheme would be applicable to those employees who were appointed on/after 01.09.2005, and since he was appointed on 04.05.2005 and was relieved from the post of District Minority Welfare Officer under the Uttar Pradesh Government on 17.06.2005 and his request for extension of the period for joining for participating in the competitive examination conducted by the Bihar Public Service Commission was duly accepted and time was allowed till 30.09.2005 for submission of the joining report and, consequently he joined on 16.09.2005, therefore, he is covered under the Old Pension Scheme.

It is the further case of the writ petitioner that the 13 candidates were appointed along with the writ petitioner, out of which 12 candidates, who were the batchmates of the writ petitioner, were covered under the Old Pension Scheme and therefore, the decision taken by the authorities to cover the case of the writ petitioner under the New Pension Scheme, is wholly arbitrary and discriminatory.

4. The writ petitioner earlier approached this Court by filing C.W.J.C. No. 12012 of 2023 for a direction to the



respondent authorities to consider his case under the Old Pension Scheme instead of New Pension Scheme.

The said writ petition was disposed of vide order dated 15.01.2024 giving liberty to the writ petitioner to approach the Principal Secretary, General Administration Department by filing appropriate representation within a period of two weeks and the said representation was directed to be disposed of by a reasoned and speaking order within a period of six weeks. In terms of the said order, the writ petitioner submitted another representation on 20.01.2024 taking exhaustive plea in support of his claim of Old Pension Scheme, but the Respondent No. 2 rejected the representation of the writ petitioner vide Memo No. 4685 dated 18.03.2024.

5. Challenging the rejection order, it is submitted before the learned Single Judge that the order was passed on the basis of the opinion of the Co-operative Department, wherein, it is stated that the delay in appointment of the writ petitioner was neither due to administrative reason nor due to litigation and the writ petitioner was himself responsible for the same and therefore, his claim is fit to be rejected. According to the writ petitioner, the date of joining is a fortuitous circumstance and those appointed by the same order are entitled to the same



benefit of the pension scheme if they have submitted the joining within the time allowed to them and since the writ petitioner was allowed time till 30.09.2005 to join, therefore, the respondents were not justified in denying the benefit of the Old Pension Scheme to him.

It is the further case of the writ petitioner that once the notification dated 28.11.2023 allows the option of the Old Pension Scheme even to those employees who were appointed after 01.09.2005, if the vacancies and advertisement were of prior date, the writ petitioner deserves the benefit of the Old Pension Scheme since he was appointed prior to 01.09.2005 and thus, his case stands on a better footing.

6. After issuance of notice, Respondent No. 2 filed a counter affidavit, wherein, the stand is taken as follows:

“12) That accordingly the petitioner assumed the charge of District Audit Officer, Muzaffarpur on 16.09.2005. That it is further submitted that after selection of the petitioner in the cadre of Bihar Administrative Service, the Co-operative Department, Government of Bihar, Patna vide its Notification No. 3557 dated 01.09.2009 relieved the petitioner for assume the charge on probationary Deputy Collector, Siwan.

13) That accordingly, the petitioner submitted his joining report to the post of probationary Deputy Collector in Siwan on 02.09.2009.



- 14) *That it is further humbly submitted that from the available records, it also appears that prior to selection of the petitioner as District Audit Officer in the State of Bihar, the petitioner had been appointed as Minority Welfare Officer under the U.P. State and had been posted as District Minority Welfare Officer, Basti.*
- 15) *That as such when the petitioner was selected as District Audit Officer in Co-operative Department under the State Government of Bihar, the petitioner requested the Co-operative Department, Bihar, Patna to extend two months more time, so that he may relinquish the charge of District Minority Welfare Officer of Basti (U.P.) to join the post of District Audit Officer in the State of Bihar.*

However, on 16.06.2005 the petitioner was relieved from the post of District Minority Welfare Officer, Basti. But after relieving the petitioner did not join the post of District Audit Officer in the Co-operative Department under the State Government of Bihar. Rather the petitioner once again requested to grant one month time to submit his joining to the post of District Audit Officer in the Co-operative Department under the State Government of Bihar.

But once again he did not join the said post and once again requested on 13.08.2005 to grant time up to September, 2005 to join the post of District Audit Officer under the Co-operative Department, Government of Bihar, Patna.

- 16) *That in the light of aforesaid representations of the petitioner the Cooperative Department finally granted time up to*



30.09.2005 to join the petitioner to the post of District Audit Officer.

- 17) *That moreover, the Co-operative Department, Government of Bihar, Patna in the light of Resolution Memo No. 1206(pe) dated 28.11.2023 issued by the Finance Department, Government of Bihar, Patna has clarified the para (i) to (iii) of para 4 of Resolution Memo No. 1206 (pe) dated 28.11.2023 in following manner:-*
- i) Vacancies and Advertisement both might be prior to 01.09.2005.*
 - ii) The process of selection had been made prior to 01.09.2005 and on the basis of merit list out of total 20 candidates only 13 candidates submitted their joining report, including the petitioner, Sri Gupta.*
- 18) *That out of 13 candidates excluding the petitioner, Sri Gupta, 12 candidates had submitted their joining report prior to 01.09.2005 and they were provided benefits of old pension scheme. But the petitioner submitted his joining report on 16.09.2005 and hence the petitioner was allotted N.P.S. i.e. New Pension Scheme.*
- 19) *That from the aforesaid facts, it is clear enough that the petitioner submitted his joining report on 16.09.2005 i.e. much after than 01.09.2005 on the date, the New Pension Scheme came into force.*
- 20) *That after the date 01.09.2005 due to administrative causes and judicial cases the process of appointment of the petitioner was not delayed. However, on the request of the petitioner himself the extra time was provided to the petitioner by the Co-operative Department to join him belatedly to the post of District Audit Officer.*



21) *That from the aforesaid facts, it is crystal clear that the appointment of the petitioner had already been done in the Co-operative Department in the State of Bihar prior to 01.09.2005. That in the appointment of the petitioner there is no any delay/laches either the Administration side or due to any process.*

Rather than the petitioner himself requested extra time to join the post and in the light of the request of the petitioner the Co-operative Department granted extension of time to the petitioner for his joining to the appointed post of District Audit Officer.

22) *That accordingly, as per convenience of the petitioner joined the said post in the Co-operative Department after of 01.09.2005. That when the petitioner submitted his joining the new pension rules was already been in force and hence the Co-operative Department included the name of the petitioner in New Pension Scheme i.e. N.P.S.*

23) *That however, on the representation of the petitioner to include him in old pension scheme, the matter was considered in the light of Resolution Memo No. 1206(pe) dated 28.11.2023 issued by the Finance Department, Government of Bihar. But the aforesaid Resolution does not allow the Respondent to include the name of the petitioner in old pension scheme.”*

7. The learned Single Judge considered the submissions advanced by the learned counsel for the respective parties as well as the notification dated 28th November, 2023



issued by the Finance Department, Government of Bihar clarifying the position where an employee can opt for Old Pension Scheme, which reads as follows:

“4. In light of the aforementioned factual position and the provisions of the Government of India, and after due deliberation, the State Government has decided that in cases where, through a single advertisement, certain candidates were appointed under the Old Pension Scheme prior to September 1, 2005, while other candidates were appointed under the NPS subsequent to 01.09.2005; those personnel appointed under the NPS shall be granted the option to opt into the Old Pension Scheme, subject to the following conditions:—

- (i) The vacancy and the advertisement must date back to a period prior to 01.09.2005;*
- (ii) The selection process must have been completed prior to 01.09.2005, and certain candidates from the merit list must have actually joined their posts prior to 01.09.2005, and must have been covered under the Old Pension Scheme;*
- (iii) The delay in the appointment process of personnel appointed subsequent to 01.09.2005, must have occurred due to administrative reasons or pending judicial litigation;*
- (iv) The concerned personnel shall submit their application regarding the option to their Appointing Authority within six months from the date of issuance of the order; subsequently, the Appointing Authority shall review the matter in accordance with the aforementioned conditions, obtain the*



concurrence of the Finance Department, and issue an appropriate order within six months from the date of submission of the application;

- (v) *The option may be exercised only once, and such exercise shall be final.*
- (vi) *As a result of inclusion of the employee from NPS in the old pension scheme, the amount accumulated in the NPS fund of the concerned employee will be adjusted in the light of Finance Department letter no. 330 dated 05.04.2016 and 485 dated 09.08.2021.”*

8. While disposing of the writ petition, the learned Single Judge has been pleased to observe as follows:

“7. In view of such circumstances and specially due to the reason that some other selected candidates joined in the same service prior to 1st September, 2005 and they were allowed to give option, as to whether they would be governed under Old Pension Scheme or not, the petitioner ought to have been governed under paragraph-4 (ii) of the Notification dated 28th November, 2023.

8. *In view of such circumstances and considering the fact that similar issue was decided previously in the following Writ petitions, according permission to express option to the petitioners under similar facts and circumstances in C.W.J.C. No. 10901 of 2006 (Md. Kayumuddin Ansari & Others Vrs. State of Bihar & Ors.), decided on 3rd August, 2011, Ashok Kumar Sharma & Ors. Vrs. The State of Bihar & Ors., reported in 2021 (1) BLJ 415 and in also C.W.J.C. No. 14039 of*



2014 (Rakesh Kumar & Ors. Vrs. The State of Bihar & Ors.), decided on 8th May, 2018.

9. This Court is of the view that the impugned order dated 18th March, 2024, passed by the Principal Secretary, General Administration Department, Government of Bihar is bad in law and set aside and quashed.”

9. Learned counsel for the State while challenging the impugned order dated 30.08.2024, basically raised the ground that the resolution bearing Memo No. 1206(PE) dated 28.11.2023, issued by the Finance Department, Government of Bihar, Patna, which is a policy decision of the Government of Bihar, has not been considered in its proper perspective and the writ petitioner deliberately or for his own causes joined the post of District Audit Officer in the Co-operative Department of the State of Bihar on 16.09.2005, much belatedly than 01.09.2005 i.e. after the New Pension Scheme came into force and as such, he is responsible for the same and cannot claim the Old Pension Scheme.

It is further argued that extension of the joining time is not the *bona fide* right of a particular individual appointed, and even though the writ petitioner has been granted extension for joining the post as he had prayed before the authorities concerned, but he could not have been provided the benefit of



the Old Pension Scheme as he had joined the post of District Audit Officer in the State of Bihar on 16.09.2005, admittedly after the New Pension Scheme came into force on 01.09.2005.

10. The writ petitioner, on the other hand, supported the impugned order and contended that when the authorities concerned allowed the extension up to 30.09.2005 and the writ petitioner joined on 16.09.2005, even if such date of joining is after the cut off date i.e. 01.09.2005 and by the time of his joining, the New Pension Scheme had come into force, however, since the process of recruitment had already completed much prior to 01.09.2005 and the writ petitioner's appointment letter was issued on 04.05.2005 and juniors to the writ petitioner were allowed to avail the Old Pension Scheme, therefore, the authorities concerned were not justified in rejecting the representation of the writ petitioner and the learned Single Judge is quite justified in passing the impugned order. It is argued that there is no perversity in the impugned order and therefore, it should not be interfered with.

11. Adverting to the contentions raised by the learned counsel for the respective parties, we find that there is no dispute that in the light of the resolution of the Government of India dated 17.02.2020, the Finance Department, Government



of Bihar issued the resolution contained in Memo No. 1206 dated 28.11.2023. It is also not in dispute that in the aforesaid resolution prescribed by the State Government, the decision has been taken that if various persons have been appointed before or after 01.09.2005 by way of same advertisement, those covered under the New Pension Scheme shall be allowed the option of Old Pension Scheme on the following conditions:

- (i) The vacancy and the advertisement must be before 01.09.2005;
- (ii) The selection process must have been completed before 01.09.2005 and some of the candidates must have submitted their joining before 01.09.2005 and must have been covered under the Old Pension Scheme;
- (iii) The delay in appointment of the employees after 01.09.2005 was not attributable to the administrative reason or litigation.

12. We are of the view that the case of the writ petitioner completely falls within the conditions which are stipulated in the resolution dated 28.11.2023. Not only the vacancy and advertisement for the post of District Audit Officer



was issued before 01.09.2005, but the selection process was also completed prior to 01.09.2005 and candidates submitted their joining report before 01.09.2005 and all of them were allowed to be covered under Old Pension Scheme. The delay in joining of the petitioner was with the due permission of the authorities and he was granted extension for joining as he was to participate in the Combined Competitive (Main) Examination. Therefore, we find no perversity or palpable unreasonableness in the impugned order of the learned Single Judge or it cannot be said that it is inconsistent with any provision of law. Since the Letters Patent Appeal is an intra-court appeal, where this Bench is supposed to sit as a Court of correction correcting its own order in exercise of the same jurisdiction and the scope of interference is within a narrow compass and as already stated that since we did not find any perversity in the same and the approach of the learned Single Judge who has passed the impugned order is quite justified, we are not inclined to interfere with the same.

Accordingly, we do not find any merits in the present Letters Patent Appeal, which stands dismissed.

13. The learned counsel for the writ petitioner at this juncture submitted that as per the impugned order, the writ petitioner has already submitted his representation before the



authority concerned giving his option to be governed under the Old Pension Scheme and he has not received any communication from the concerned authority.

14. Since we are of the humble view that the case of writ petitioner is governed under the Old Pension Scheme and rightly so it has been held by the learned Single Judge and the impugned order dated 18th March, 2024, passed by the Principal Secretary, General Administration Department, Government of Bihar has been set aside, the authorities concerned shall do the needful within a period of two months from today and communicate the order to the writ petitioner in the light of the order of this Court indicating therein that his case would be governed under the Old Pension Scheme.

15. Interlocutory Application(s), if any, shall also stand disposed of.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	A.F.R.
CAV DATE	
Uploading Date	27.04.2026
Transmission Date	

