

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Letters Patent Appeal No.6 of 2025****In****Civil Writ Jurisdiction Case No.13044 of 2014**

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1. Ashok Singh S/o - Late Chandra Deo Prasad Singh, R/o - NIT Patna Campus, Patna - 5, P.S. - Pirbahore, District - Patna. Now at present R/o- Sonadih, Sona Gopalpur, P.S. - Gopalpur, Sampatchak, Patna -7.
 2. Md. Arshad, S/o- Md. Yunus, Resident of - G.Lane, Pirbahore, Patna- 6, P.S.- Pirbahore, District - Patna.
 3. Kumar Abhishek, S/o - Late Purendra Mishra, R/o- Nagina Nagar, Kumhrar, P.S. - Agamkuan, District- Patna.
 4. Vishwanath Mahto, S/o Late Ram Briksha Mahto, Resident of - N.I.T. Campus, P.S. - Pirbahore, District - Patna, at present R/o- Golakpur, Ashok Raj Path, P.S. - Pirbahore, District- Patna.

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of Human Resource Development, Department of Secondary and Higher Education, Shastri Bhawan, New Delhi.
2. The National Institute of Technology, Patna through its Director, N.I.T. Patna.
3. The Director, National Institute of Technology, Patna.
4. The Registrar, National Institute of Technology, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Siya Ram Shahi, Adv. Mr. Abhishek Raj Kashyap, Adv. Ms. Shally Kumari, Adv.
For the NIT	:	Mr. Y. V. Giri, Sr. Adv. Mr. Sanjay Kumar Giri, Adv. Mr. Mritunjay Harsh, Adv.
For the UOI	:	Mr. Brajesh Kumar Pandey, CGC

CORAM: HONOURABLE THE CHIEF JUSTICE**and****HONOURABLE MR. JUSTICE HARISH KUMAR****ORAL JUDGMENT****(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)****Date : 17-03-2026**

We have heard Mr. Siya Ram Shahi, learned counsel
for the appellants, Mr. Y.V Giri, learned senior counsel for the





National Institute of Technology, Patna and Mr. Brajesh Kumar Pandey, learned counsel for the Union of India.

2. The present intra-court appeal is preferred against the order/judgment dated 29.11.2024 passed by the learned Single Judge in CWJC No. 13044 of 2014, whereby and whereunder the claim of the writ petitioners for extending benefit of Old Pension Scheme came to be rejected.

3. The facts, in brief, are that the petitioners were duly appointed against Class III and Class IV post under the Centre for Water Resources Studies (in short 'CWRS') sometime in the year 1983 and 1984. The CWRS as then was a self financing research organisation having its head of the department Civil Engineering, Patna University. In the meeting of the Centre Management Committee, Patna University, held on 04.09.1986 in the Chairmanship of the Principal, Bihar College of Engineering, Patna, it was decided to provide regular pay scale to the petitioners.

4. Subsequently, while the petitioners were working in Class III and Class IV posts on the recommendation of the Committee constituted by the Senate and Syndicate as also on the recommendation of the Committee constituted by the Vice Chancellor, Patna University and in the light of the letters of the





State Government as well as the order of the Court, the services of the petitioners were duly absorbed from the date of their joining in the respective pay scale of Class III and Class IV post vide office order dated 28.01.2004 (Annexure-5 to the writ petition). The writ petitioner nos. 1 and 2 have been posted in the Bihar College of Engineering, Patna as Routine Clerk against the post of Accountant and Lab Assistant respectively. Similarly, the writ petitioner Nos. 3 and 4 have been posted as Lab Attendant and *Daftari*. In pursuance of the aforesaid letter of absorption, the petitioners submitted their joining on 29.01.2004. In the meantime, another development took place and vide notification dated 28.01.2004 issued by the Ministry of Human Resources Development, Bihar College of Engineering, Patna has been taken over as fully funded institute of the Central Government and rechristen as National Institute of Technology, Patna with immediate effect. Consequent upon said take over CWRS, Bihar College of Engineering Patna has also been taken over.

5. Notwithstanding the aforesaid facts, when the petitioners have been deprived from payment of current salary as well as arrear thereof, the petitioners and one another identically situated person filed CWJC No. 8087 of 2004





seeking a direction, *inter alia*, to accept the joining of the petitioners whose services have been absorbed by the office order dated 28.01.2004 and further to extend salary from 29.01.2004 on account of their absorption in terms with office order dated 28.01.2004.

6. The writ petition filed by the petitioners was finally allowed vide order dated 09.01.2006 with a direction to the National Institute of Technology to take over the services of the petitioners on their respective posts and utilize their services on regular basis and pay their remuneration, including arrears of pay, in accordance with law. The National Institute of Technology, Patna aggrieved with the order of the learned Single Judge has preferred LPA No. 245 of 2006. However, the same stood dismissed on 28.01.2006. Thereupon both the orders of the learned Single Judge as well as the learned Division Bench of this Court were questioned in SLP (Civil) No. 19811 of 2006 before the Hon'ble Supreme Court by the National Institute of Technology, Patna and finally the said SLP has been disposed off on 03.03.2008 in terms of the compromise arrived between the parties. In the light of the order of the Hon'ble Supreme Court and in terms of the compromise arrived between the parties, the petitioners were being treated as the employees





of the National Institute of Technology, Patna w.e.f. 28.01.2004 and have also been allowed the current as well as arrears of salary. Subsequently, while the petitioners were discharging their duties to their respective posts, in the meanwhile, the Registrar, National Institute of Technology vide its office order dated 23.06.2014 directed the petitioners to apply for Permanent Retirement Account Number (PRAN) in NPS system by 26.06.20014, failing which it is further directed that they shall be subjected to departmental proceeding. Aggrieved with the order dated 23.06.2014, the petitioners filed the writ petition bearing CWJC No. 13044 of 2014.

7. It would be relevant to note here that during the pendency of the writ petition, the petitioner No. 3, Purendra Mishra died on 24.11.2014 due to carcinoma and after the death, his wife, Renu Devi had been pursuing litigation but she also died on 17.05.2021 and accordingly an interlocutory application bearing I.A. No. 2 of 2022 was filed for substituting the name of Kumar Abhishek, who has been substituted in pursuant to the order dated 17.07.2023.

8. While assailing the afore-noted order, learned Advocate for the petitioners submitted that it is not material when services of the petitioners have been regularised; the





important aspect of the matter is that whether the absorption / regularisation would amount to new appointment? The absorption /regularisation of the petitioners cannot be treated as a fresh appointment, but in a most arbitrary manner they have been treated as a new entrant and wrongly put in New Pension Scheme following the cut off date 01.01.2004. It is also submitted that para 2(i) of the notification dated 04.11.2015 would come into the aid of the petitioners to the extent that the petitioners were duly appointed in National Institute of Technology on 28.01.2004, therefore, their services to be treated as All India Services. It is further contended that even if the National Institute of Technology is an autonomous body, it is under the control of the Government of India and in that event the petitioners are also entitled to have the benefit of para 2(i) of the aforementioned notification contained in notification dated 04.11.2015.

9. The aforesaid submission of the petitioners were refuted by the learned Advocates for the National Institute of Technology as well as the Union of India.

10. The learned Single Judge having heard the learned Advocates for the respective parties vide its order/judgment dated 29.11.2024 dismissed the writ petition in the following





terms:

“ x x x x

5. *Learned counsel for the petitioners is relying on Para 2(i) to the extent that petitioners were appointed in NIT on 28.01.2004, therefore, their services to be treated as All India Services. Even if it is autonomous body it is under the control of Govt. of India in that event petitioners are also entitled to have the benefit of Para 2(i) of the aforementioned clarification. It is to be noted that Para 2(i) is in respect of "and appointed to All India Services on or after 01.01.2004". There is no iota of material to show that All India Services/State Government or autonomous bodies as in the earlier clause, therefore, the later clause is restricted to only such of those employees who were working in a pensionable establishment namely Central/State Governments or autonomous bodies as on 31.12.2003. No doubt, petitioners were working in autonomous body on 31.12.2003. However, petitioners were not appointed in All India Services like "appointed to All India Services on or after 01.01.2004". In the absence of word autonomous bodies and All India Services, the petitioners are not entitled to have the benefit of old pension scheme in view of the fact that they were regularized on 28.01.2004, the date on which new pension scheme was introduced w.e.f. 01.01.2004.*





6. Accordingly, the present writ petition stands dismissed.”

11. Mr. Siya Ram Shahi, learned Advocate for the appellants submitted that the appellants were not a direct recruit under the services of the Union of India, rather their services have been absorbed by Patna University and posted them in the erstwhile Bihar College of Engineering where they were working against Class III or Class IV post on regular pay scale as casual/daily wage employee. The absorption in the services was not a fresh recruitment and since the petitioners were working in the erstwhile Bihar College of Engineering, which was later on taken over by the National Institute of Technology, Patna with their liabilities and assets on 28.01.2004, hence, the petitioners-appellants herein are entitled to Old Pension Scheme. Heavy reliance has been placed on Clause 2(ii) of the office memorandum dated 04.11.2015. Reliance has also been placed on a decision rendered in the case of ***Nagar Mahapalika, Kanpur vs Smt. Vibha Shukla & Ors [(2007) 15 SCC 161]***, wherein the Court has held that regularisation is not a mode of appointment.

12. It is vehemently contended that the learned Single Judge has not taken into consideration the office memorandum





dated 04.11.2015 issued by the Government of India whereby classification regarding counting of past services for admissibility of old pension scheme, in view of pension scheme, pay protection and leave accumulation to All India Services has been issued to its entirety and admittedly on 28.01.2004, the services of the appellants-writ petitioners were regularised /absorbed by the Patna University while they were posted in the Bihar College of Engineering, Patna. On account of the aforesaid reason, their services were duly absorbed by the National Institute of Technology, Patna in terms of the compromise arrived between the parties in SLP (Civil) No. 19811 of 2006. In that view of the matter, the petitioners cannot be said to be new entrant or a fresh recruit. The petitioners had been working in an autonomous body and later on absorbed in All India Services on/or after 01.01.2004 with proper permission shall be covered under the old non-contribution pension scheme.

13. *Per contra*, Mr. Y.V. Giri, learned Senior Advocate has submitted that the writ petition as well as the Letters Patent Appeal is barred by waiver, acquiescence and estoppel, inasmuch as, services of the petitioners as casual employees were regularised against Class III and Class IV post with effect





from 28.01.2004 in pursuant to the order of the Hon'ble Supreme Court based upon the terms of the compromise arrived at between the parties. As per the terms of the compromise, it was agreed by the petitioners that in future they will not claim anything monetary or otherwise from the National Institute of Technology, Patna for the period prior to 28.01.2004. It was also made clear that the petitioners agreed not to claim any benefit or take any steps for implementation of the order passed in CWJC No. 8087 of 2004 and if any of the party acts against the terms and conditions of the compromise, the same will not be entertained anywhere. The terms and condition incorporated in the compromise petition are binding upon the parties to the compromise, hence the prayer made by the petitioners, appellants herein is not tenable in the eye of law. It has further been contended that the New Pension Scheme came into effect from 01.01.2004 and any employee joining the government service on or after 01.01.2004 will be covered by the NPS and not under the Central Civil Services (Pension) Rules, 1972.

14. After careful consideration of the submissions advanced by the learned Advocates for the respective parties; before proceeding further, it would be pertinent to take note of the admitted facts that the petitioners were casual employees





under CWRS till 28.01.2004, the date on which the erstwhile Bihar College of Engineering was taken over by the Central Government from Patna University and it was rechristened as National Institute of Technology, Patna under the Ministry of Human Resources Development. The petitioners on being deprived of the benefits of regular employee, including salary and arrears thereof, have filed CWJC No. 8087 of 2004 seeking a direction upon the respondent National Institute of Technology, Patna to accept their joining on absorption in pursuant to the office order dated 28.01.2004, besides their current salary as well as arrears thereof. The writ petition was finally allowed vide order dated 09.01.2006 with a direction to the National Institute of Technology, Patna to take over the services of the petitioners; and finally the matter went to the Hon'ble Supreme Court in SLP (Civil) No. 19811 of 2006 which came to be disposed off on 03.03.2008, in terms of the compromise arrived at between the parties. The copy of the compromise deed was taken on record and the Special Leave to Appeal was disposed of in terms therewith.

15. We have also gone through the compromise deed and found that the petitioners, who were respondent Nos. 1 to 4 before the Hon'ble Supreme Court, had agreed that in future,





they will not claim anything monetary or otherwise for the period prior to 28.01.2004 on which date, National Institute of Technology, Patna came into existence after taking over of Bihar College of Engineering; they have also assured that they will withdraw the contempt petition and will not take any steps for implementation of the order passed in CWJC No. 8087 of 2004 nor they will claim anything in the light of the said order against National Institute of Technology, Patna. The compromise deed further clarified that if any of the party acts against the terms and condition of this compromise, the same will not be entertained anywhere and the terms and conditions incorporated in the compromise petition are binding upon the parties to the compromise.

16. Despite the aforesaid position that the petitioners undertook that they will not press for implementation of the order of the learned Single Judge in CWJC No. 8087 of 2004, this Court is conscious of the settled law that the doctrine of estoppel is not applicable against the law. Hence, we further proceeded to examine the legality of the impugned order. Since the issue before the learned Single Judge was in respect to applicability of notification dated 04.11.2015, it would be apt and proper to reproduce the same:





*" No. 25011/6/2014-AIS(II)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
North Block, New Delhi-110001
Dated: 04/11/2015*

OFFICE MEMORANDUM

Subject:-Counting of past service for admissibility in old pension scheme, new pension scheme, pay protection and leave accumulation to All India Services officers: clarification regarding.

I am directed to say that while introducing the New Pension Scheme from 01/01/2004, amendments to various existing rules including second proviso to Rule 1 of the All India Services (Death Cum Retirement Benefits) Rules, 1958 were made whereby these rules became inapplicable to those appointed to All India Service and posts from 01/01/2004. The pension of the member of All India Services appointed on or after 01/01/2004 is regulated by the New Defined Contribution Pension Scheme (known as the New Pension Scheme), notified by the Ministry of Finance (Department of Economic Affairs) vide their Notification No.5/7/2003-ECB2 PR dated 22/12/2003 now rechristened as National Pension System as per Section 8 of Pension Fund Regulatory Development Authority Act, 2013. The guidelines for New Pension Scheme in respect of All India Services was issued by this Department vide letter No.25014/14/2001-AIS(II) dated 08/09/2009 in terms of the instruction/guidelines notified by the Ministry of Finance.

2. Therefore, in view of the above new and changed position, this Department has received references from the State Governments and member of services for clarification in regard to counting of past services for the purpose of pensionary benefits, pay protection and leave accumulation. The matter has been examined by this Department in consultation with the Ministry of Finance (Department of Expenditure) and Department of Pension and Pensioners' Welfare





and has decided as under: -

(i) The member of All India Services who had been an employee in pensionable establishment viz. Central/State Governments or autonomous bodies as on 31/12/2003 and appointed to All India Services on or after 01/01/2004 with proper permission shall be covered under the old non-contribution pension scheme in terms of Office Memorandum No. 28/30/2004-P&PW(B) dated 28/10/2009, which has been made applicable Mutatis-Mutandis to members of All India Services by this Department vide letter No. 25014/1/2013-AIS(II) dated 18/3/2013. The pay protection and leave accumulation arising out of previous service would be admissible as per relevant rules of respective All India Services (Pay) Rules and All India Services (Leave) Rules, 1955.

[Underline Supplied]

(ii) Those under CPF etc will not be allowed entry into the old pension scheme on appointments from 01/01/2004. (iii) The member of All India Services who were appointed to government service in the central/state governments or autonomous bodies, whether in a pensionable or non-pensionable establishment, on or after 01/01/2004 before being appointed to All India Services shall be governed by the New Pension Scheme. The pay protection and leave accumulation arising out of their previous service would be admissible as per the relevant rules of the respective All India Services (Pay) Rules and All India Services (Leave) Rules, 1955.

[Underline Supplied]

(iv) The admissibility of counting of past services for the purpose of benefits as mentioned at point (i) and (iii) above shall be subject to continuous service and technical resignation.

3. The State Governments are competent to determine the past service rendered by the member of service for such benefits as mentioned above. The service rendered by a member of All India Services





before his appointment to the service under the Central Government or a State Government will count as continuous service for the said benefits subject to the fulfilment of the specific conditions provided in the All India Services (Leave) Rules, 1955 and the respective All India Services (Pay) Rules. Approval of the Central Government is not necessary for counting the previous service for such benefits. In such cases the Government of the State on whose cadre the member of service is borne/the Accountant General concerned, will have to take necessary action in consultation with the Central/Department or the State Government, if the officer had worked under the Central Government or another State Government, as the case may be, before joining the All India Services, to count such service as qualifying service for the aforesaid benefits. If any clarification is required or condonation of break in service is involved, a reference may be sent to the Department of Personnel and Training in the case of members of the Indian Administrative Services, the Police Division of the Ministry of Home Affairs in the case of Indian Police Service and the Ministry of Environment, Forest and Climate Change in the case of members of Indian Forest Service.

*Sd/-
(Rajiv Jain)*

Under Secretary to the Government of India"

17. The contention of the writ petitioners-appellants herein that Clause 2(i) made it clear that member of All India Services who had been an employee in pensionable establishment viz. Central/State Government or autonomous bodies as on 31.12.2003 and appointed to All India Services on or after 01.01.2004 with proper permission shall be covered under the old non-contribution pension scheme in terms of the





office memorandum No. 28/30/2004 dated 28.10.2009 as has been made applicable mutatis mutandis to members of All India Services by the departmental letter No. 25014 dated 18.03.2013, clarified the position that those who had been an employee in pensionable establishment of the afore-noted bodies as on 31.12.2003 and appointed to All India Services on or after 01.01.2004 shall be entitled to Old Pension Scheme which came into force on 01.01.2004. There is no doubt that the petitioners were working in an autonomous body on 31.12.2003 but admittedly as a casual employee on a daily wage basis. For the first time, the services of the petitioners were absorbed vide order dated 28.01.2004, and simultaneously by another order of similar date i.e., 28.01.2004, Bihar College of Engineering was taken over by National Institute of Technology, Patna.

18. We have also carefully perused the letter of absorption of the petitioners which clearly said that all such appointments shall be effective with effect from the date of joining without benefit of their past services and such stipulation has never been subjected to challenge. Since the petitioners were working in CWRS, Bihar College of Engineering as casual worker, in any view of the matter, they cannot be said to be the members of All India Services, who had





been an employee in pensionable establishment. The learned Single Judge has taken note of the aforesaid fact and it has rightly concluded that no doubt the petitioners were working in the autonomous body on 31.12.2003 but as a casual employees, however, the petitioners were not appointed in All India Services on or after 01.01.2004 and moreover the word 'absorption' denotes taking over the services of an employee in the regular cadre/establishment, and in any view of the matter, it is to be treated as fresh appointment, unless otherwise specifically provided in the absorption letter.

19. In the case at hand, the absorption letter of the petitioners clearly suggests that they were absorbed in the services of Bihar College of Engineering with effect from 28.01.2004 but the same shall be treated as fresh appointment. The services of the petitioners were also taken over by National Institute of Technology, Patna with effect from 28.01.2004, which is, admittedly after the cut off date on 31.12.2003. Since the petitioners were working as causal workers on 01.01.2004, in no circumstances they can be said to be working in a pensionable establishment under the All India Services or autonomous bodies. It is in this premises the parties have entered into a compromise with a clear stipulation that the





petitioners shall not claim any benefit of their past services; based upon which the Hon'ble Supreme Court has disposed of the SLP in terms with such agreement.

20. So far the reliance placed by the learned Advocate for the appellants on a decision rendered in the case of **Vibha Shukla** (supra) is concerned, the issue involved therein was with respect to applicability of U.P. Intermediate Education Act, 1921 *viz-a-viz* U.P. Municipal Corporation Act, 1959 in the matter of appointment of respondent teachers before the Hon'ble Supreme Court. The claim of the teachers were based on Section 108-A(b) of the 1959 Act, which, *inter alia*, provided that appointment of a teacher of an institution recognized in accordance with 1921 Act, and maintained by the Municipal Corporation should be made in accordance with the provisions of 1921 Act. The Hon'ble Supreme Court after having considered the statutory embargo contained in Section 108 of 1959 Act which clearly stipulated that such extension of service must be treated to be a fresh appointment that too subject to the condition that the appointment made under the said Section would not in any case, continue beyond the end of educational session during which such appointment made; while allowing the appeal held that the prescription of 1921 Act has no





application to the facts of the case. The Hon'ble Court further observed that 1959 Act, being a later Act, ordinarily would prevail over 1921 Act. While adjudicating the aforesaid issue, the Hon'ble Court has further observed that the regularization is not a mode of appointment and this has also been re-enforced by the Constitution Bench of the Apex Court in **Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1]**.

21. The facts of the afore-noted case, with due regard, has no application in the present case. It would be worth noting here that the employees, who have engaged themselves as a casual employee, being fully aware of the stipulation that they had no right to continue in services or being regularized is estopped from seeking absorption. The appointment by way of absorption is regulated subject to the offer and terms and conditions stipulated by the concerned authority. In the case at hand, the offer accepted without any demur, which was finally crystallized in the compromise arrived at between the parties and in pursuance thereto, the *lis* has been finally disposed of by the Hon'ble Supreme Court.

22. In view of the aforesaid facts and the settlement arrived at by the parties before the Hon'ble Supreme Court, this Court does not find any perversity in the impugned





order/judgment passed by the learned Single Judge.

Accordingly, the Letters Patent Appeal, being devoid of merits, stands dismissed.

23. The parties shall bear their own cost.

(Harish Kumar, J)

Sangam Kumar Sahoo, CJ: I agree

(Sangam Kumar Sahoo, CJ)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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