

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1497 of 2016

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Krishna Narayan Yadav, aged about 60 years, Son of Late Bhagwat Yadav,
Resident of village- Tulapatti, P.O.- Parsa, P.S.- Kishanpur, District- Supaul

.... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, (Primary Education), Govt. of Bihar, New Secretariat, Patna
2. The Principal Secretary, Human Resources Development Department (Primary Education), Govt. of Bihar, New Secretariat, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, Supaul
5. The District Education Officer, Supaul
6. The District Programme Officer(Establishment), Supaul
7. The District Treasury Officer, Supaul
8. The Block Education Officer, Pipra, District- Supaul
9. The Head Master, Primary School, Chakla, Block- Pipra, District- Supaul

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Raghubir Chandrayan, Advocate

For the Respondent/s : Mr. Sanjay Sinha, AC to GA4

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 29-01-2016

Heard learned counsel for the petitioner and the respondents.

2. The petitioner prays for quashing the letter dated 28.08.2012 issued under the signature of District Education Officer, Supaul addressed to all the Headmaster-cum-Drawing and Disbursing Officer indicating guidelines for calculating the age of teachers for compulsory retirement, who were minor at the time of appointment by the Managing Committee of the private school, which was subsequently taken over in the year 1976. He has also prayed for

quashing the letter no. 78 dated 09.01.2013 issued under the signature of District Programme Officer (Establishment), Supaul by which he has been compulsorily retired w.e.f. 31.10.2010.

3. The petitioner's case in short is that he was born on 15.01.1956 and appointed as a teacher by the Managing Committee of Primary School, Chakia, which was a private school, on 01.11.1968. The said school was taken over by the Government in the year 1976. The date of birth of petitioner is 15.01.1956. The retirement age of the assistant teachers were enhanced in the year 2005 under Rule 73 of the Bihar Service Code to 60 years from 58 years. The petitioner as such would complete 60 years on 15.01.2016. In the meantime, the petitioner was compulsorily retired on 31.10.2010.

4. The petitioner as per his date of birth would complete 60 years on 15.01.2016. However, he has been compulsorily retired vide letter no. 78 dated 09.01.2013 of the District Programme Officer (Establishment), Supaul w.e.f. 31.10.2010.

5. The impugned order has been passed in view of letter no.940 dated 28.08.2012 as per which a teacher could serve service for a maximum period of 42 years, as the minimum age for appointment is 18 years and the age of retirement is 60 years.

6. According to the respondents, since the petitioner has put in 42 years of service on 31.10.2010 from the date of his

appointment on 01.11.1968, he has been so compulsorily retired.

7. Counsel for the petitioner submits that in view of Government policy and decision of Division Bench of this Court dated 27.04.1994 passed in C.W.J.C. No.7737 of 1991, any length of service beyond maximum period admissible under the law is to be deducted from the date of superannuation. Paragraphs 6 and 8 of the order is quoted herein below:

“6. In one of the writ applications, namely, C.W.J.C. No. 7549 of 1993 a counter affidavit has been filed wherein it has been stated the petitioner thereof was found to be below 18 years of age as on 1.1.1971. A counter affidavit has been filed by the State in other cases.

8. We may, however, observe that in these cases where the petitioner(s) is/are found to be minor(s) on the date of appointment/nationalization of the school the said period may be subtracted from the date of their superannuation.”

8. Counsel for the petitioner submits that the period of 42 years ought to have been counted from the date the school was taken over in the year 1976 and not from the date he was inducted into a private school. Relying upon a decision of this case in case of Binod Kumar Yadav Vs. The State of Bihar & Ors., passed in CWJC No. 5424 of 2012, learned counsel submits that the Government policy

and the order of the Division Bench of this Court would not cover the period which an employee has put in a private institution prior to take over. Furthermore, the petitioner had entered into service on 01.11.1968, at the time when the institution was a private school. The Government did not provide any monetary aid or any other facility and there was no age restriction on appointment as Assistant Teacher in private school.

9. Counsel for the State submits that the aforesaid order of this Court relied upon by the petitioner would cover such case, where short fall from majority age is of minor nature.

10. In the facts of the case, I find it appropriate to relegate the matter to the District Programme Officer (Establishment), Supaul, who will examine all these aspects within a period of four months from the date of receipt of a copy of this order. It will be open for the petitioner to take a plea that Annexure-1 would not govern his case in view of earlier decisions of this Court noted in the orders, on which he has placed reliance.

11. The writ application is disposed of with the aforesaid observation.

(Samarendra Pratap Singh, J.)

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