IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1207 of 2013
IN
Civil Writ Jurisdiction Case No. 7233 of 2013

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Dr. Mridula Kumari W/O Mr. Shailendra Nath Sahu R/O Q.No.- O/6, Lal Bag Professor'S Colony, Sarai, P.S.- Tatarpur, Town & District- Bhagalpur

.... Appellant

Versus

1. The T.M. Bhagalpur University, Bhagalpur through its Registrar
2. The Syndicate, T.M. Bhagalpur University, Bhagalpur through its Chairman-Cum-Vice Chancellor, T.M. Bhagalpur University, Bhagalpur
3. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur
4. The Pro-Vice Chancellor, T.M. Bhagalpur University, Bhagalpur
5. The Registrar, T.M. Bhagalpur University, Bhagalpur
6. The Finance Officer, T.M. Bhagalpur University, Bhagalpur
7. The State Of Bihar, Through the Chief Secretary, Govt. Of Bihar, Patna
8. The Principal Secretary, Department of Planning and Development, Govt. Of Bihar, Patna- Cum-The Chairman, University/College Teaching/Non-Teaching Employees Pay Revision Committee, Bihar, Patna
9. The Principal Secretary, Department Of Finance, Govt. Of Bihar, Patna
10. The Principal Secretary, Department Of Education, Govt. Of Bihar, Patna
11. The Director, Higher Education, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Purushottam Kr. Jha, Advocate
For the State	:	Mr. Chittranjan Sinha, PAAG-2
		Mr. R.K.Singh, Advocate
For the TMB University	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Amarendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 22-11-2016

Heard learned counsel for the appellant and learned counsels for the State and for the Tilka Manjhi Bhagalpur University.

The appeal has been filed against the order dated

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8.7.2013 passed in CWJC No. 7233 of 2013 by a learned Single Judge of this Court by which the writ petition was dismissed as wholly misconceived.

The writ petitioner-appellant before us was appointed as Lady Medical Officer in the University Health Service on 15.5.1978 and received several promotions thereafter and since 5.9.2011 functioning as Chief Medical Officer at University Health Centre. On 22.12.2011 the State Government came out with a notification enhancing the age of retirement of the Doctors working in the State Government in the Bihar Health Service Cadre. The petitioner represented on 4.1.2012 and filed several representations thereafter for enhancing the age of superannuation of the Doctors working in the University. On 30.1.2013 the University notified that the appellant shall retire on 30.9.2013 on attaining the age of 62 years. The appellant thereafter filed CWJC No. 7233 of 2013, out of which the present appeal arises, seeking a direction on the respondents concerned to enhance the age of retirement of doctors working in University Health Services, Bihar including the petitioner from 62 years to 65 years as has been done in the case of the doctors of the State of Bihar and for consequential benefits. The writ petition was dismissed with the following observations:

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> "In the considered opinion of this Court, such prayer is wholly misconceived. Every employee is governed by his or her own service Rules. In the University Service the age of retirement of non-teaching employee as of now is 62 years and unless Section 67 of the Act is amended by the Legislature the age of retirement for even the University Doctors will be the same i.e. 62 years. This Court cannot issue a mandamus to Legislature to amend the Act and the Statutes for enhancing the age of retirement of non-teaching employees of the University."

Aggrieved by the same the present appeal has been filed.

After filing of the appeal the State Government came out with a notification dated 19.2.2014 by which the age of retirement of the Doctors of the University has been enhanced from 62 years to 65 years from the date of the notification.

Learned counsel for the appellant submits that the State has always treated such Doctors (Physicians) of the University at par with the Doctors of the Bihar Health Service with regard to the service conditions and therefore similar treatment with regard to the age of superannuation should also be given to the Doctors of the Universities as to the Doctors of the Bihar Health Service.

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It is further submitted that the Education Department of the State Government wrote upto the Minister concerned who was also of the view that the age of superannuation of such Doctors (Physicians) should be increased to 65 years with effect from 22.12.2011 and it was on the pointed objection of the Finance Department that the notification has been issued on 19.2.2014 with prospective effect.

It is also submitted by learned counsel for the appellant that the total number of Doctors in the University Service in all the Universities of Bihar would not be more than 15 to 18 and thus those adversely affected by the notification dated 19.2.2014 with prospective effect would only be one or two like the appellant and thus even though the decision has been taken on the basis of the representation filed by the writ petitioner but on account of delay in taking the final decision in the matter she has been deprived of the benefit of extension of the age of superannuation, which is not just and proper in the given circumstances.

Learned counsel also submits that with regard to the teachers of the University the State Government had issued a notification on 7.12.2011 with retrospective effect from 30.6.2010 and thus there is no reason why the Doctors in the Services of

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Universities should have been treated differently and retrospective notification could not have been issued.

It is urged by learned counsel for the appellant that the fact that the Doctors in the Universities were treated at par with the Doctors of the Bihar Health Service is also reflected in the notification dated 19.2.2014 which states that similar benefit are being extended as to the Doctors of the Bihar Health Service. It is submitted that with regard to other service conditions also, including Dynamic ACP, the Doctors in the University Service have been treated at par with the Doctors of Bihar Health Service.

In support of his contention, learned counsel for the appellant relies upon a decision of a learned Single Judge of this Court in the case of Dr. Nawal Kishore Choudhary & Anr. Vs. Rajendra Agricultural University, Bihar & Ors: 2012 (2) PLJR 281, in which in the case of teachers of the Rajendra Agricultural University direction had been given to enhance the age of retirement from 62 years to 65 years as had been done with respect to the teachers of the other Universities, in para-21 of the said judgment in the following terms:

> "21. The Court reaches a decisive conclusion that taking into consideration the various directives, the communications as well as 2010 UGC regulation, there is a mandate for the respondent authorities to

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bring about parity even in matter of superannuation of Agricultural University in the State. There is a requirement upon the State Government as well as the University in question to either amend or notify the age of superannuation enhancing it from 62 to 65 to ensure that the uniformity in terms of recommendations made by the University Grants Commission and the Central Government is brought about even in the cases of these petitioners."

Learned counsel also submits that the action of the State Government has been discriminatory in the sense that it did not take prompt decision in the case of Doctors of the University whereas with regard to the employees of the Bihar Employees State Insurance Corporation Health Cadre the date of enhancement is 23.7.2013 from 62 years to 65 years and even if on that date the notification with regard to University Doctors have been issued the appellant would have been benefited by the enhancement of age.

Learned counsel for the State, on the other hand, supports the order of the learned Single Judge stating that the terms and conditions of services of the writ petitioner-appellant is governed by the provisions of Section 67 (a) of the Bihar State Universities Act, 1976 which clearly provides that the date of retirement of non-teaching employee (other than the inferior

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service) shall be the date on which he attains the age of 62 years. It is thus submitted that the appellant cannot seek a mandamus which is contrary to the statutory provisions.

It is also submitted by learned counsel that the case of the appellant stands on a different footing from the Doctors of Bihar Health Service working in the State Government as the service conditions of the Doctors working in the University Health Service is governed by the Universities Act and the Statutes whereas the service condition of the Doctors of Bihar Health Service, being State Government employee, is governed by the Bihar Service Code. In view of the fact that the service conditions of the two categories are different, even though the nature of work may be similar but the same does not entitle the appellant and other Doctors of the University for similar service condition.

In support of the aforesaid stand learned counsel for the State relies upon a decision of the Supreme Court in the case of State of Bihar & anr. Vs. Teachers' Association of Govt. Engineering College & Ors.: (2000) 10 SCC 527, in paras 3 to 5 of which it has been held as follows:

> "3. The three engineering colleges in question are owned by the State. The teachers of these three engineering colleges are recruited through the Bihar Public Service Commission. Their service

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conditions are governed by the Bihar Service Code. Under the relevant provisions of the Bihar Service Code the age of superannuation up to 1989, was 58 years. However, with effect from 1-10-1989 the age of superannuation has been raised to 60 years.

4. Bihar Engineering College, Patna is a college of University of Patna. The teachers in Bihar Engineering College being university teachers are recruited through the University Service Commission, Their service conditions are governed under the Patna University Act. At the relevant time the age of retirement for university teachers was 62 years. However, with effect from 15-8-1992 the age of retirement has been reduced to 60 years.

5. The respondents contend that their age of retirement should be the same as the age of retirement of university teachers employed in Bihar Engineering College, Patna. But the terms and conditions of service of teachers in the three engineering colleges of the State are different from the terms and conditions of service of the university teachers employed in Bihar Engineering College at Patna. The authority responsible for recruitment is also different. The method of recruitment is different and service conditions are prescribed under different rules and regulations and/or under a separate Act. We fail to see how in respect of the teachers who are government servants, governed by the Bihar Service Code, the age of superannuation should be different

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> from the age of superannuation for all other government servants governed by the Bihar Service Code. The High Court ought not to have equated the service conditions in the three State colleges with the service conditions in a University college. Application of Article 14, in these circumstances, is misconceived, when there are valid criteria for differentiating between the service conditions in the two sets of colleges. In the premises the impugned judgment of the High Court insofar as it directs that the age of superannuation of teachers working in the three engineering colleges other than Bihar College of Engineering, Patna should be brought on par with the age of superannuation of those working in Bihar College of Engineering at Patna, is set aside. The further direction to pay arrears or give benefits flowing from the extended age of superannuation is also set aside. The appeals are allowed accordingly."

Learned counsel also relies upon a Division Bench decision of this Court dated 28.6.2016 in LPA No. 852 of 2012 and analogous cases (The State of Bihar & Ors. Vs. Dr. Radha Krishna Choudhary), in para 15 and relevant part of para 16 of which it has been held as follows:-

> "15. Thus, in view of the judgments of the Apex Court enumerated above all doctors of the Bihar Health Service belonging to a single cadre cannot in

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the facts, have different service conditions including different age of superannuation within a cadre itself.

16. Thus to that extent we set aside the judgment of the learned Single Judge. We would, therefore, dismiss the appeals of the State and allow the appeals of the postgraduate diploma holder doctors and the M.B.B.S. doctors of the Bihar Health Service. The result would be that with effect from 28.01.2011 up to 22.12.2011 any doctor of Bihar Health Service who has been made to superannuate upon attaining the age of 62 years would be held to have been wrongly superannuated. They would be entitled to the same benefit that was conferred upon the postgraduate doctors of the Institute….."

We have considered the submissions of learned counsels for the parties. It is evident from the provisions of Section 67 of the Bihar State Universities Act, 1976 that the date of retirement of non-teaching employees (other than the inferior service) has been fixed as 62 years. The learned Single Judge has rightly held that unless Section 67 of the Act was amended by the Legislature the age of retirement of the University Doctors would continue to be the same and the Court cannot issue a mandamus to the Legislature to amend the Act and the Statutes for enhancing the age of retirement of non-teaching employees of the University.

In the meantime, during the pendency of the appeal

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the State Government has come out with the notification dated 19.2.2014 by which the age of the Doctors (Physicians) in the University has been enhanced from 62 to 65 years but from the prospective date. The question would be as to whether the writ petitioner-appellant who had been pursuing her remedies before this Court would also be entitled to the same benefit. In our view, the said enhancement of age of retirement from 19.2.2014 is a policy decision of the State Government and there is no illegality alleged by the petitioner-appellant to claim the same from any retrospective date, that is, the date from which the Doctors of Bihar Health Services have been granted the benefit of age enhancement for retirement.

Reliance of learned counsel for the appellant on the decision of this Court in Dr. Radha Krishna Choudhary (supra) can be of no avail as the said decision was rendered on the ratio that where there was a single cadre of Bihar Health Service from which different stream of Doctors were there, including the Doctors posted in the Indira Gandhi Institute of Cardiology, then there could have been no question of making any discrimination by further special sub-classification between the same cadre and provide for different dates for the enhancement of retirement age for the two classes and in the said circumstances, this Court

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directed that the benefit of retirement age to the other Doctors of the Bihar Health Services would be with effect from 28.1.2011 as was conferred upon the Doctors in the Services of the Government who were serving in the Indira Gandhi Institute of Cardiology. The very ratio of the said decision militates against the case of the appellant who undisputedly does not belong to the same cadre as the Doctors of the Bihar Health Service. In this regard the matter is squarely covered by the decision of the Supreme Court in the case of Teachers' Association of Govt. Engineering College (supra) where it has been noted that teachers employed in Government Engineering Colleges could not claim the same benefit with regard to the age of retirement as the University Teachers employed in Bihar Engineering College, Patna as they belong to different services with different service conditions prescribed under different rule and regulations and/or separate Act. For the said reasons, the judgment of this Court was set aside and the appeal of the State Government was allowed.

The reliance upon the decision of the State Government in its notification dated 7.12.2011 to grant retrospective benefit of enhancement of age of retirement from 30.6.2010 to the University Teachers cannot also be of any avail as the same was certainly not contrary to the provisions of the

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Universities Act. In fact, the University Grants Commission has prescribed the age of retirement of 65 years for teaching employees of the Universities and Colleges. It is clearly directed in the Act that for the teachers the age of retirement would be the same as would be decided by the University Grants Commission in future, since the University Grant Commission had decided on 30.6.2010 for enhancement of retirement age of the teachers of the Universities from 62 to 65 years, it was for the said reason that the State Government has issued notification on 7.12.2011 with retrospective effect from 30.6.2010. No such provision could be shown with regard to the retirement age of University doctors like the petitioner-appellant.

So far as the reliance upon the decision of the learned Single Judge of this Court in Dr. Nawal Kishore Choudhary (supra) is concerned, the same was rendered in a very different circumstances which do not apply to the facts of the present matter and further being a decision of a learned Single Judge is not binding upon this Bench. With regard to the correctness of the said decision, it would not be proper for us to comment in the present matter.

Similarly, the reliance upon the notification dated 23.7.2013 for the employees of the Bihar State Employees State

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Insurance Corporation Cadre can have no relevance so far as the appellant is concerned as it relates to entirely an different cadre and at different point of times such decisions are being taken by the State Government. Similar benefit from that very date cannot be sought by a person belonging to another cadre. It is evident from the notification dated 23.7.2013 that the same is also prospective and not retrospective.

For all the aforesaid reasons we do not find any merit in the appeal. It is, accordingly, dismissed.

In view of the dismissal of the appeal, I.A. No. 7988 of 2016 which was filed for amendment of the relief sought in the writ petition at the appellate stage, also stands dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Birendra Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2017
Transmission Date	

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