

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7009 of 2013

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Gulab Jha Son of Sri Mahendra Jha, resident of village - Lahta, P.O. Lahta, P.S. Manigachhi, District Darbhanga.

.... Petitioner/s

Versus

1. Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District Darbhanga through Registrar Sri Sudhir Kumar Choudhary
2. The Vice Chancellor, Kameshwar Singh Darbhanga University, Kameshwar Nagar, Darbhanga
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga
4. The Governing Body, Sarbjeet Sanskrit Upshastri Mahavidyalaya, Lahta, P.O. Lahta, P.S. Manigachhi District Darbhanga Through Its Secretary
5. The Secretary, Adhoc Governing Body, Sarbjeet Upshastri Mahavidyalaya, Lahta, P.S. Manigachhi, District Darbhanga
6. The State of Bihar through Principal Secretary, Education Department, New Secretariat, Patna
7. Sri Gunanand Jha, Incharge Principal, Sarbjeet Sanskrit Upshastri College, Lahata, P.O. - Lahta, P.S. Manigachhi, District - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durganand Jha, Adv.

For the Respondent/s : M/s Awadhesh Pd. Sinha, Mrityunjay Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-05-2016

Heard learned counsel for the petitioner, State and Kameshwar Singh Darbhanga Sanskrit University.

In this case, the petitioner is challenging the superannuation at the age of 60 years, as per his claim, retirement of the petitioner is pre-mature and as per the provisions of Bihar Universities Act, 1976 he should have been allowed to work upto the age of 62 years, but he has been deprived of the service of two years, claimed that his superannuation is declared to be illegal and is not

sustainable in law.

The petitioner was appointed as Clerk in Sarbjeet Sanskrit Upshastri Mahavidyalaya, Lahta, Darbhanga, he continued there as Clerk, but he has forcibly been superannuated from service on 04.03.2013. As per the claim of the petitioner, he should have been allowed to work there for two years more claiming that the colleges in the Intermediate level of Sanskrit are governed by the Bihar Universities Act, 1976 and in terms of Section 67 of the said Act, the age of retirement of teaching staff and non-teaching staff, has been mentioned 62 years, where it has been provided that teachers superannuated at the age of 62 years, subject to the variation made by the University Grants Commission, but no such stipulation has been made with respect to the age of superannuation of non-teaching staff. As per the claim of the petitioner, he would superannuate from service after reaching the age of 62 years. The Government with regard to the teaching staff has reduced the age of superannuation from 62-60 years, which is under challenge before this Court, but no such amendment has been affected with regard to the age of superannuation of the non-teaching staff whereas the counsel for the University submits that the petitioner is not governed by the Universities Act whereupon this Court has asked to apprise this Court, which rule governs the petitioner fixing the date of superannuation whereupon he

has placed reliance on the letter of Deputy Director (Higher Education) dated 7.7.2010 (Annexure-A) and submitted that in absence of rule, this letter would govern the service conditions of the petitioner.

It is very surprising as the service condition of employees are either governed by the rules or regulations, in absence of rule, the executive instructions are issued by the Government fixing the service condition of an employee, but there is no law that the letter of this Deputy Director would regulate the service condition, which is completely non- statutory, the letter of an officer cannot be a basis for fixing the service condition of an employee and so much so that this letter is also related to the teaching class of the persons, not dealing with the non-teaching staff so even presuming that it will govern the field, but does not deal with the service condition of non-teaching staff and the counsel for the University has fairly accepted that the examination of students, who are prosecuting the Upshastri, is conducted by the Kameshwar Singh University, inasmuch as the letter dated 7th July 2010 shows that the condition of service of employees are also governed by the Universities Act, in such view of the matter, the contention of the University does not stand to any reason and it appears to be misconceived submission by the University.

The contention of the petitioner is supported from the letter of the Registrar dated 17/7/2006 (Annexure-7) which itself shows the age of superannuation of non-teaching staff is 62 years.

In such view of the matter, the writ petition of the petitioner is allowed. The action of the College/University to superannuate the petitioner at the age of 60 years, is completely illegal, in consequence thereof the petitioner would be entitled to the reinstatement to the original place and he is also entitled to the all consequential benefits.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.5.16
Transmission Date	