IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17131 of 2008

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Rup Narayan Singh son of late Ram Bishun Singh, resident of village and P.O. Dhandihan P.S. Koilwar, District Bhojpur at Arrah at present posted as Inspector of Police (Arms) B.M.P. 10, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General cum Inspector General of Police, Bihar, Patna.
3. The Additional Director General, B.M.P. Bihar, Patna.
4. The D.I.G. of Police, B.M.P. Central Zone, Patna.
5. The Commandant, B.M.P. 10, Patna.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Ram Hriday Prasad
For the Respondent/s : Smt. Alka Verma, AC to SC-17

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 10-03-2017

Heard Sri Ram Hriday Prasad, learned counsel for the petitioner and Smt. Alka Verma, learned A.C. to Standing Counsel – 17.

2. The petitioner had filed the present writ petition in the year 2008, with a prayer to quash an order contained in Memo no. 2922 dated 20-10-2008 (**Annexure – 5**) issued by the Commandant, Bihar Military Police 10, Patna. By the said order, he had decided the date of superannuation of three police officials, which include the name of the petitioner. The Commandant, considering the fact that in the service book of the petitioner, only age as 19 years was mentioned and he was appointed on 01-02-1968, took a decision to superannuate

the petitioner and other two persons as on 31-01-2009 i.e. after completion of 60 years of age.

3. Short fact of the case is that the petitioner was initially appointed as Constable in B.M.P.-10, Patna on 01-02-1968. Subsequently, his service book was opened and in service book, only year of birth of the petitioner was recorded, which was 1949. The petitioner, serving in the department, was finally promoted to the post of Sub-Inspector of Police and thereafter, in Memo No. 38 dated 03-01-2008 (**Annexure – 3** to the petition), about 29 police officials' name was incorporated showing the date of their superannuation. The petitioner's name finds place at serial no. 3 and keeping in view his date of joining i.e. 01-02-1968, it was shown that he will be superannuating w.e.f. 31-01-2009. After noticing the fact that instead of proposing to superannuate the petitioner w.e.f. 30th June, 2009, the petitioner, aggrieved with the **Annexure – 3**, filed representation before the competent authority and finally his claim for extension of date of superannuation was rejected, vide order impugned i.e. order dated 20-10-2008 (Annexure – 5 to the writ petition). Immediately thereafter, the petitioner has approached this Court by filing the present writ petition.

4. Sri Ram Hriday Prasad, learned counsel for the

petitioner submits that in identical situation, number of other police officials, regarding whom save and except year of birth there was nothing, were also proposed to retire before actual date of retirement and they filed objections. In some cases, without interference by this Court, the respondent authorities itself corrected the date of their superannuation and in some cases, this Court interfered and considering the provision contained in Rule 97(1) of the Bihar Financial Rules, reliefs were granted to such persons.

5. Learned counsel for the petitioner has placed heavy reliance of judgment of this Court reported in **2006 (1) PLJR 200 (Baban Singh Vs. The State of Bihar & Ors.)** and **2007 (Supp.) PLJR 1065 (Ram Nath Singh Vs. The State of Bihar & Ors.).** It has been argued that in identical case, the claim of Sri Ram Nath Singh was rejected, then he approached this Court and a Bench of this Court, considering the law settled by this Court in Baban Singh's case (*supra*), allowed the writ petition. In sum and substance, it has been argued that even in absence of any judgment of this Court, once statutory provision prescribes to do a thing in a particular manner as per settled law, any action is to be taken in view of statutory provision and not otherwise. Accordingly, a prayer has been made to quash Annexure – 5 and direct the respondents to extend the date of

superannuation of the petitioner from 31-01-2009 to 30th June, 2009 and grant all consequential benefits.

6. Learned State counsel, though has opposed the prayer sought for in the writ petition and tried to justify the stand of the respondents by way of referring to facts disclosed in the counter affidavit, but on the question of law, she was not in disagreement. She accepts that in view of Rule 97 of the Bihar Financial Rules, which was considered time without number by this Court in a case where exact date of birth in the service book is not recorded, instead year is mentioned, the retirement date can be fixed in the middle of the year i.e. in the month of June itself.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. The question in similar situation was finally set at rest by a Division Bench of this Court in a case reported in **2001(1) PLJR 667 (State of Bihar Vs. Devendra Kumar Mishra),** the said proposition of law was again examined by a Single Bench of this Court in a case reported in **2006 (1) PLJR 200 (Baban Singh Vs. The State of Bihar & Ors.).** At this juncture, the Court proposes to simply incorporate paragraph – 9 and 10 of Baban Singh's case (supra), which are as follows:-

> "**9.** Learned Counsel for the petitioner referred to decision in the case of **State of Bihar v. Bharat Singh** reported in

2002 (1) PLJR 228 in which the Division Bench while hearing Letters Patent Appeal upheld the decision of a Single Judge holding that when only the year of birth was mentioned in the service book the date of retirement would be end of the year in which he would complete the age of retirement but he clearly conceded that the said judgment was passed without considering the relevant Rules and the correct principle appears to be laid down in the Division Bench judgment of this Court in the case of **State of Bihar v. Devendra Kumar Mishra** reported in 2001 (1) PLJR 667. Learned Counsel further pointed out that in this judgment the Court had noticed and placed reliance only upon Bihar Financial Rules and on the basis of Rule 97(1), in a similar case it was held that 1st July would be the date of superannuation when the employee had mentioned only the year of his birth. Such provision was held to be rational and just but it was not noticed that it was in Section IV which contains special Rules only for the Public Works Department. But he again fairly submitted that in para 11 of the said judgment the Division Bench had noticed that Rule 233(iii) of the Bihar Board's Miscellaneous Rules and Rule 97(1) of the Bihar Financial Rules are exactly identical.

10. There is no requirement of giving a finding in this case whether Rule 97 of the Bihar Financial Rules would apply to employees of Departments of Bihar Government other than Public Works Department or not because it has been held above that petitioner's case is covered by provision of Rule 97(1) of Bihar Financial Rules which are exactly identical to Rule 233(iii) of Bihar Board's Miscellaneous Rules. Hence, this Court has no difficulty in holding that the Division Bench judgment in the case of

> **State of Bihar v. Bharat Singh** is not a binding precedent because it is *per incuriam* of the relevant Rules. In fact the judgment itself mentions that the Division Bench found the matter too petty and, therefore, did not allow the issue to be continued in Letters Patent Appeal. The Division Bench judgment in the case of **State of Bihar v. Devendra Kumar Mishra** must be accepted as a binding precedent for this case because of the finding in that judgment that Rule 233(iii) of Bihar Board's Miscellaneous Rules and Rule 97(1) of the Bihar Financial Rules are exactly identical and in case covered by such Rule, 1st July must be prescribed as the date of superannuation. Even if Rule 97(1) of the Bihar Financial Rules is held to be inapplicable to employees of Departments other than Public Works Department it would make no difference because of the aforesaid finding and in view of the fact that as per Full Bench judgment in the case of **Maheshwar Prasad Singh v. State of Bihar** the main body of the Bihar Board's Miscellaneous Rules as existing on 26.1.1950 must be treated to be statutory in nature."

8. Even though, law on the issue was already set at rest, again the respondent/State in one another case had taken a distinct stand, thereafter, one another writ petition was filed in the similar situation by one Ram Nath Singh, who too was appointed as Constable in B.M.P.10 on 01-02-1968 like the petitioner. In the said case, initially, it was proposed to superannuate Ram Nath Singh, in view of provision contained in Rule 97(1) of the Bihar Financial

Rules, but subsequently, it was altered and thereafter, a Bench of this Court mainly placing reliance on Baban Singh's case (*supra*) allowed the writ petition and directed for granting all consequential benefits. In the case of Baban Singh (*supra*), this Court, while directing for granting consequential benefit, had also directed to make payment of the salary for the said period, but in aforesaid two cases, they were to retire after completion of 58 years and subsequently, the age of superannuation was extended from 58 to 60 years. However, in any event, the case of the petitioner cannot be differentiated with the aforesaid cases i.e. case of Baban Singh (*supra*) and Ram Nath Singh (*supra*).

9. In view of facts and circumstances, particularly the fact that in similar circumstances, this Court has repeatedly allowed the prayer for extension of date of superannuation considering the fact that in the service book only year of birth was recorded instead of date and month, the Court is of the opinion that petitioner deserves to be granted same relief.

10. Accordingly, the impugned order i.e. order contained in Memo No. 2922 dated 20-10-2008 passed by the Commandant, B.M.P.10, Patna (**Annexure – 5**) is hereby set aside. Since the petitioner has already superannuated during the pendency of the writ

petition, while allowing the writ petition, it is directed to grant all consequential benefits to the petitioner in the light of direction of this Court. Respondents are directed to complete all formalities within a period of three months from the date of receipt/production of a copy of this order.

11. The writ petition is allowed.

(Rakesh Kumar, J.)

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