

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1721 of 2014

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1. Surendra Chaudhary S/O Late Umesh Chaudhary Resident Of Shobha Sadan At Khabra Dih, P.O. Khabra, Police Station Sadar (Muzaffarpur), District Muzaffarpur, Presently Posted As Foreman In Mit, Muzaffarpur

.... Petitioner

Versus

1. The State Of Bihar.
2. The Secretary, Department Of Science and Technology, Govt. Of Bihar, Patna.
3. The Director, Department Of Science and Technology, Govt. Of Bihar, Patna.
4. The Principal, M.I.T., Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Bindhyachal Singh, Adv.
For the Respondents : Mr. Birju Prasad, GP XIII with
M/S Ravi Kumar & Ashok Kumar, AC to GP XIII

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 09-10-2017

Heard both sides.

2. The petitioner, herein, seeks direction of this Court commanding the respondents to extend the age of retirement of the petitioner from 60 to 62 years in view of the order, dated 17.09.2010, passed in C.W.J.C. No. 8937 of 2009, after holding that the petitioner being a Foreman is holding the teaching and vocational post.

3. The facts, in brief, is that the petitioner was appointed on the post of Foreman in the Indian College of Engineering, Motihari, on 04.11.1986. The college was taken over by the State Government on 09.12.1986 and the petitioner was transferred to Muzaffarpur Institute of Technology, Muzaffarpur, on 30.01.1991. The post of Foreman and senior/junior instructor has been declared as teaching staff, pursuant to the order, passed in C.W.J.C. No. 7169 of 1991 and the order passed in M.J.C. No. 1348 of 1996, vide letter, as contained in Memo No. 3/96, issued by the Additional Secretary, Science & Technology Department,



Bihar, Patna (Annexure 2). The petitioner was granted equivalent pay scale by the University Grant Commission. The age of superannuation of instructor was extended from 60 to 62 years holding the same to be a teaching post in pursuance of the order passed by this Court on 17.09.2010 in C.W.J.C. No. 8937 of 2009.

4. The State of Bihar preferred Letters Patent Appeal no. 42 of 2011 and the same was also dismissed (Annexure 4). All India Technical Educational Council recommended for enhancement of age of superannuation of all categories of teachers of engineering colleges, Government Polytechnic and Government Women Polytechnic and in pursuance of the aforesaid recommendation, Science & Technology Department, Bihar, Patna, by Circular no. 1738, dated 28.08.2006, enhanced the age of superannuation from 60 to 62 years. The petitioner filed representation before the authority to allow him to superannuate on attaining the age of 62 years, but, during the pendency of this writ petition, the petitioner was forced to retire on 31.01.2014 at the age of 60 years vide order, as contained in Memo No. 1226, dated 27.12.2013 (Annexure 7), issued by the Principal, Muzaffarpur Institute of Technology, Muzaffarpur.

5. The petitioner filed I.A. No. 797 of 2014 making prayer for quashing of the aforesaid letter, as contained in Annexure 6 forcing him to retire at the age of 60 years.

6. The Respondent-State filed counter affidavit. The respondent has stated that the petitioner was working on the post of Foreman and he can not be treated to hold the post of teacher despite his



pay scale being equivalent to the pay scale of Lecturer and despite being called teaching staff. As per the recommendation of the University Grant Commission and judicial pronouncement of a Division Bench of Patna High Court, the petitioner can not be treated as teaching staff. The petitioner was working in Muzaffarpur Institute of Technology, Muzaffarpur, under the State Government and not in the University and his service conditions, therefore, are guided by the Bihar Service Code. There is an amendment in Bihar State Universities (Amendment and Validation) Act, 2012, by which definition of teacher is that teacher means persons holding the post of only University Professor/Professor, Reader and Lecturer and such sanctioned posts in the teacher's grade on the basis of regulations issued by the University Grant Commission from time to time. It is also made clear notwithstanding the said substitution in Section 2(V) the action taken in respect of working Demonstrators appointed before 18.09.1975 on the sanctioned post before 01.01.1973 with the concurrence of the Bihar Public Service Commission or Bihar State University Service Commission shall not be affected by this substitution (Annexure 'A' to the counter affidavit). The service condition and pay scale of teachers, working in the universities and colleges, are recommended by the University Grant Commission. In **L.P.A. No. 505 of 2009 (The State of Bihar & Ors. Vrs. Suresh Kumar Saran & Ors.)**, a Division Bench of this Court has held that the instructors are not eligible for enhancement in age for superannuation compared to the teachers (Annexure 'C' to the counter affidavit). The Supreme Court in **Civil Appeal No. 2548-50 of 1993 (State of Bihar &**



Anr. Vrs. Teachers Association of Government Engineering Colleges & Ors.) has made it clear that service condition recommended by the University Grant Commission is not applicable in the case of employee of Government owned engineering colleges as their service conditions are guided by separate rules. Against the order, passed in **L.P.A. No. 42 of 2011, S.L.P. (Civil) No. 8282 of 2012 (the State of Bihar & Ors. Vrs. Ram Das)** is still pending in the Supreme Court.

7. Mr. Bindhyachal Singh, the learned counsel for the petitioner submits that there is no dispute that the petitioner was working on the post of Foreman-senior instructor in the Engineering College. This Court in C.W.J.C. No. 7169 of 1991 held that the post of Foreman and senior/junior instructor is teaching staff and in pursuance of the aforesaid order the Additional Secretary, Science & Technology Department, Bihar, Patna, declared that Foreman and senior/junior instructor shall be treated as teaching staff. One Ram Das, who was working as senior instructor in the Science & Technology Department, Bihar, Patna, was made to superannuate with effect from 31.03.2009 at the age of 60 years and he preferred C.W.J.C. No. 8937 of 2009 for a direction to the respondents to allow him to continue and superannuate after attaining the age of 62 years. A Single Bench of this Court, vide order, dated 17.09.2010, held that the staff of engineering colleges are categorized as teaching and non-teaching. The first category is gazetted staff, which included Principal, Assistant Professor and Workshop Superintendent and in the non-gazetted category of teaching staff includes Foreman, Senior Instructor, Laboratory Assistant and Drafts Man. There is a separate



category of non-teaching staff. The State of Bihar preferred Letters Patent Appeal against the order passed in C.W.J.C. No. 7169 of 1991, which was dismissed and the Special Leave Petition of the State of Bihar was also dismissed. The Science & Technology Department, Bihar, Patna, vide letter, as contained in Memo No. 1738, dated 28.08.2006 (Annexure 6) enhanced the age of superannuation of all categories of teaching staff from 60 to 62 years. On such, the Single Bench of this Court allowed Ram Das to continue in service till he attains the age of 62 years.

8. The State of Bihar preferred L.P.A. No. 42 of 2011 and the Division Bench of this Court has dismissed the appeal that the dispute with regard to category of teachers has been settled long back by a judgment of the learned Single Judge, dated 02.11.1995. The State of Bihar preferred S.L.P. (Civil) No. 8282 of 2012 against the order, dated 27.06.2011 passed in L.P.A. No. 42 of 2011 and the same has already been dismissed and, therefore, the case of the petitioner stands on same footing and since the petitioner has retired at the age of 60 years he is only entitled to get salary till he attains the age of 62 years.

9. On the other hand, the learned counsel for the State submitted that the petitioner can not be treated as teaching staff. The Apex Court has held in the case of (**State of Bihar & Anr. Vrs. Teachers Association of Government Engineering Colleges & Ors.**), **Civil Appeal No. 2548-50 of 1993**, disposed off on 27.08.1998, that the teachers of engineering colleges can not claim to be treated at par with the employees and teachers of the constituent colleges or the University



as their service conditions are governed by different rules, but, it appears that the learned counsel for the State has made the submission, which is not relevant in this case. The petitioner has not asked for any treatment at par with the teachers of the constituent colleges and universities. The Science & Technology Department, Bihar, Patna, in pursuance of the order passed in C.W.J.C. No. 7169 of 1991 held that the Foreman and senior/junior instructors are also teaching staff working in the engineering colleges and the different polytechnics of the Government of Bihar and, accordingly, they were granted pay scale. The Government of Bihar also issued letter, as contained in Memo No. 1738 on 28.08.2006, by which the Government of Bihar has enhanced the age of teaching staff working in the engineering colleges, Government Polytechnic and Government Women Polytechnic from 60 to 62 years and on these facts a Single Bench of this Court has held that the post of Foreman and senior/junior instructor is teaching staff working in the engineering colleges, Government Polytechnic and Government Women Polytechnic and they are entitled to superannuate at the age of 62 years. The judgment of the Single Bench has been confirmed in Division Bench in L.P.A. No. 42 of 2011 on 27.06.2011.

10. The S.L.P. (Civil) No. 8282 of 2012 preferred by the State of Bihar, against the order passed in L.P.A. No. 42 of 2011 on 27.06.2011, has also been dismissed and, therefore, I find that the case of the petitioner stand on the same footing as that of Ram Das and the petitioner is also entitled to continue till he attains the age of 62 years. Since, the petitioner was forced to retire on 31.01.2014, at the age of 60



years, the petitioner is entitled to get salary and other allowance as if he was in service till 31.01.2016.

11. Accordingly, the writ petition is **allowed**. The respondents are directed to pay salary and other allowances of the petitioner treating him in service till he attains the age of 62 years, within four months, from the date of receipt of this judgment.

(Prabhat Kumar Jha, J)

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