

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17567 of 2017

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Karuna Ojha, W/o Baleshwar Ojha, resident of Vill.- Khabra, P.S.- Sadar,
Dist.- Muzaffarpur Petitioner

Versus

1. The State of Bihar through Principal Secretary, Higher Education, Bihar, Patna.
 2. Secretary, Education Department, Govt. of Bihar, Patna.
 3. Director, Higher Education, Govt. of Bihar, Patna.
 4. Secretary, Department of Finance, Govt. of Bihar, Patna.
 5. Vice Chancellor, B.R.A. Bihar University, Muzaffarpur.
 6. Registrar, B.R.A. Bihar University, Muzaffarpur.
 7. Finance Officer, B.R.A. Bihar University, Muzaffarpur Respondents
- =====

Appearance :

For the Petitioner	:	Mr. Teg Bahadur Singh, Senior Advocate Mr. Maruth Nath Roy, Advocate
For the Respondents	:	Mr. Kameshwar Kumar -GP17
For the University	:	Mr. Amit Bhushan, Advocate Mr. Zaki Haider, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-12-2018

Heard learned Senior counsel for the petitioner as well
as learned counsel for the respondents.

2. Mr. Singh, learned Senior counsel appearing for the petitioner has submitted that Memo no. 1909 dated 20.11.2017 whereby the enhanced age of 67 for retirement of doctors in the service of the University of Bihar has been made applicable, should be extended to the petitioner. He submits that even though the petitioner has retired on 30.9.2017 she is entitled to benefits of the subsequent decision dated 20.11.2017 and is legally entitled to continue in service till attaining the age of 67 years in terms of the decision dated 20.11.2017. It is submitted by learned Senior counsel for the petitioner that there has to be parity in the age of



superannuation of the University doctors with that of the doctors serving the State Government. It is his submission that since the petitioner had already agitated the matter for grant of benefit of enhanced age of retirement of 67 years, before this Court by filing C.W.J.C.No. 2651 of 2017, she was entitled to benefits of the enhanced age of retirement. It is submitted that the petitioner who is serving as a doctor in the service of the University cannot be discriminated in the matter of age of retirement with that of the doctors posted in the State Government service. It is his submission that when the age of retirement was enhanced from 65 to 67 years in respect of doctors serving the State Government by notification dated 30.7.2015 (annexure 4), the same stood automatically applicable to the petitioner who was serving as a doctor in the service of the University.

3. In support of submission learned Senior counsel for the petitioner has placed reliance on a judgment of this Court in case of **Smt. Clara Ainda Vs State of Bihar and others**, reported in **2005(4) PLJR 691**. Relying upon paragraph 21 learned Senior counsel has submitted that the enhanced age of superannuation in terms of the decision dated 30.7.2015 in respect of the State Government employees was to be automatically applied to the petitioner.



4. This Court has examined the case relied upon by learned Senior counsel for the petitioner. That was a case where the petitioner/employee of the Indira Gandhi Institute of Medical Sciences (IGIMS) established under an Act, 1984 were seeking parity in the matter of age of superannuation with that of those working in the All India Institute of Medical Sciences (AIIMS). In respect of employees of the IGIMS resolutions of the Board of Directors of the IGIMS at the 33rd meeting on 5.3.1991 and 6.3.1991 which found echo in communication dated 10.09.1991 providing for automatic application of the same terms and conditions as employees of AIIMS. Having considered the said factors, this Court arrived at a conclusion that in view of the communication of the State Government as well as the resolution of the Board of Directors the issue regarding automatic applicability of the service condition of the AIIMS being applicable to the IGIMS was already in existence. Taking note of the fact that subsequent thereto there was no Government order or resolution to the contrary, the terms and conditions of service of AIIMS were automatic to apply to the IGIMS on the basis of the said communication dated 10.10.1991 and the Board resolution of the IGIMS.



5. No such decision of the State Government or the University has been placed on record to claim automatic implementation of the enhanced age of superannuation at 67 years in the instant case. On the contrary the order dated 14.7.2017 passed in C.W.J.C.No. 2651 of 2017 filed by the petitioner claiming enhanced age of retirement at 67 years, clearly shows that it was specific case of the petitioner that in spite of recommendation from the University for giving the enhanced age of retirement at 67 years “no decision has been taken at the level of the Government with regard to such enhancement of age of superannuation”. Taking note of such submission, the writ petition was disposed of with direction to the State authorities to take a final decision in the matter within two months. Admittedly, as per the petitioner’s own case in C.W.J.C.No. 2651 of 2017 no decision had been taken to automatically apply such enhanced age of superannuation to the doctors serving in the University.

6. For the first time decision was taken through resolution dated 20.11.2017 to enhance the age of superannuation of doctors serving in the University from 65 to 67 years. Prior to the said date there was no such enhancement in age of superannuation, and the petitioner as well as others who may have attained 65 years before 20.11.2017 were to superannuate in terms



of the existing age of superannuation at 65 years which was in vogue prior to issuance of resolution dated 20.11.2017.

7. The fact that the petitioner had been agitating his grievance also could not enure to the petitioner's benefit as the petitioner's date of superannuation on attaining the age of 65 years is 30.9.2017. The age of superannuation was enhanced to 67 years on 20.11.2017 about two months after the petitioner's retirement/superannuation. The petitioner therefore under the existing age of superannuation was rightly retired on attaining the age of 65 years.

8. The fact that the petitioner was pursuing the matter for enhancement of age cannot be made basis of carving out an exception so as to grant the benefit of enhanced age of superannuation to the petitioner with effect from a date prior to the resolution dated 20.11.2017 enhancing the age of superannuation. The petitioner has not been able to demonstrate that otherwise on account of any other circumstance or Government decision she was entitled to retire on attaining the age of 67 years prior to 20.11.2017.

9. The writ petition claiming benefits of enhanced age of superannuation at 67 years with effect from the date prior to the resolution dated 20.11.2017 whereby such enhanced age was



applied to doctors serving in the University like the petitioner is therefore unsustainable in law.

10. The writ petition is devoid of merit and the same is dismissed.

Shashi

(Madhuresh Prasad, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2018
Transmission Date	NA

