

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14019 of 2014

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1. Narendra Kumar Sinha, aged about 60 years, Assistant Professor in Physiotherapy and Occupational Therapyt, Viklang Bhawan Hospital, Kankarbagh, Patna – 20, S/o Late Mundirka Prasad Singh R/o Priyadarshi Nagar, P.O. Bahadurpur Housing Colony, P.S. Agamkuan, Kumhrar, Patna - 26
 2. Prem Prakash Sharma, aged about 60 years, Assistant Professor in Physiotherapy, Bihar College of Physiotherapy and Occupational Therapy, Viklang Bhawan Hospital, Kankarbagh, Patna – 20, S/o Late Sadhu Sharan Sharma Flat No. 404, Nilamber Apartment, East Boring Canal Road, P.S. Budha Colony, Distt. - Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Department of Health, Govt. of Bihar, Patna
4. The Deputy Secretary, Department of Health, Govt. of Bihar, Patna
5. The Secretary, Department of Finance, Govt. of Bihar, Patna
6. The Secretary (Resources), Department of Finance, Govt. of Bihar, Patna
7. The Deputy Secretary, Department of Finance, Govt. of Bihar, Patna
8. The Director - in - Chief, Health Services, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	MrAnand Kumar Ojha, Mr A K Karna, Advocates
For the Respondent/s	:	MrMukul Prasad,AC to GP XVIII

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 18-02-2019

Heard Mr Anand K Ojha on behalf of the petitioners and
Mr Mukul Prasad., AC to GP XVIII for the State.

2 Writ petition has been filed with a prayer that a
direction may be issued for enhancement of age of superannuation
of the petitioners from 60 years to 65 years. The petitioners are



working as Physiotherapist under the State Government. Mr Ojha appearing on behalf of the petitioners submits that by Notification dated 03.05.2017, the age of Physiotherapist and Occupational Physiotherapist (including Teaching Wings) of Degree Holders has been enhanced to 67 years. The notification is with effect from the date of its issuance being 03.05.2017. He submits that the petitioners had already approached this Court for the said relief for enhanced age of retirement in the year 2014, and, as such, they should also be extended the benefit of Notification dated 03.05.2017. Reliance is placed on the decision passed in the case of *Dr Nawal Kishore Choudhary -Versus- State of Bihar & Others* in *LPA No 1210 of 2013*. Relying upon paragraphs 2 and 11 of the said judgment, it is submitted that the petitioners are also entitled to benefit of the enhanced age of superannuation, as the Division Bench under similar circumstances in the said judgment had found similarly situated persons to be entitled to benefits of enhanced age of retirement though they had retired during pendency of their claim before the Writ Court. Notification dated 03.05.2017 extending the benefit of enhanced age of superannuation as 67 years with effect from the date of its issuance that is 03.05.2017, however, has not been challenged by the petitioners. The cut off date fixed in the Notification dated 03.05.2017 is, therefore, not



under challenge, nor any submissions have been made in this regard. However, it is submitted that since the claim of the petitioners was pending in this Court then on the same analogy as in the case of *Dr Nawal Kishore Choudhary (supra)*, benefit of enhanced age should be extended to the petitioners also.

3 The learned State Counsel, on the other hand, has submitted that as a matter of policy, the State Government has enhanced the age of superannuation of Physiotherapist and Occupational Physiotherapist to 67 years by fixing a cut off date for grant of said benefit that is with effect from 03.05.2017. The Notification contemplates that the same shall come into force with immediate effect. The Notification, therefore, does not contemplate grant of benefit of the enhanced age of superannuation to those who have retired prior to 03.05.2017. The petitioners, in the instant case, have attained the age of retirement and retired on attaining the age of 60 years on 31.08.2014, in the case of petitioner No 1, and petitioner No 2 has retired on 30.09.2014. Cut off date fixed in the Notification dated 03.05.2017 has not been challenged.

4 This Court is of the view that petitioners cannot be permitted to place reliance on the judgment in the case of *Dr Nawal Kishore Choudhary (supra)* inasmuch as the benefits of the



enhanced age of retirement had been extended in compliance of the judgment in *CWJC No 13450 of 2010* which was taken note of in the case and which directed that benefits of enhanced age of superannuation be extended to others also. The relevant paragraph of decision in *CWJC No 13450 of 2010* relied upon to extend benefits of enhanced age of superannuation to petitioners in the case of *Dr Nawal Kishore Choudhary (supra)* is being reproduced:

*“23 State of Bihar as well as the University are directed to take immediate steps to ensure the enhancement of age of superannuation of the employees like the petitioners of the Agricultural University to 65 years. They shall be entitled to continue in service till they reach the new age of superannuation. **If during the pendency of the writ application they have been made to retire, then they all have right to claim their position back on the post they were working till they reach the new age of superannuation.**”*

(emphasis supplied)

5 Thus, it was the benefit of enhanced age of retirement granted by the Court which was extended to the petitioners. In the instant case, there is no such judgment that benefits of notification fixing 03.05.2017 as cut off date for enhancement of the age of superannuation, has to be extended to others. Facts are different in the instant case where enhancement in age of retirement as a matter of policy has been given effect to with effect from 03.05.2017, i e, to those who were in service as on 03.05.2017. There is no direction of any Court to enhance the age of



Physiotherapist or Occupational Physiotherapist such as the petitioners who had already retired prior to 03.05.2017. The benefit of enhanced age of retirement is only available under the policy decision of the Government Notification issued on 03.05.2017, which comes into effect with effect from the date of its issuance. There is nothing in the Notification extending the benefit to anyone who has retired prior to 31.01.2017. Petitioners, retired long before the same and cannot claim that the benefit shall be extended to them merely for the fact that their matter was pending before this Court. On that score, the claim of the petitioners is different from that in the case of *Dr Nawal Kishore Choudhary (supra)*.

6 Cut off date fixed in the Notification dated 03.05.2017 is not under challenge and no submissions have been advanced assailing the cut off date. Also there is no direction or finding of any Court that the enhanced age of retirement is to be extended to all across the board irrespective of the date on which they retired.

7 Only because petitioners' claim was pending in the instant proceedings, they cannot be extended the benefits of enhancement in age of superannuation to 67 years as the



notification granting the said benefit is with effect from 03.05.2017.

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

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.02.2019
Transmission Date	NA

