IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10651 of 2022

==

Ganga Deyal Singh @ Ganga Dayal Singh Son of Late Komal Singh, resident of Village-Dekuli, P.O.-Dorra, P.S.-Chauram, Kapri, District-Arwal.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Principal Accountant General (A and E), Bihar, Patna.
4. The Senior Accounts Officer, Office of the Principal Accountant General (A and E), Bihar, Patna.
5. The Assistant Accounts Officer, Office of the Principal Accountant General (A and E), Bihar, Patna.
6. The Registrar, Civil Court, Gaya.
7. The Accountant, Civil Court, Gaya.
8. The Clearance and Disposal Officer, Civil Court, Gaya.
9. The District Provident Fund Officer, Gaya.
10. The District Magistrate, Gaya.
11. The District Treasury Officer, Gaya.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Dharmendra Kumar Paswan, Advocate
		Mr. Amar Kumar, Advocate
For the Respondent/s	:	Dr. Mankeshwar Siwani, AC to AAG-3
For the P.H.C	:	Mr. Pyush Lal, Advocate
For the A.G.	:	Dr. Anand Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 07-08-2023

Heard Mr. Dharmendra Kumar Paswan, learned counsel appearing on behalf of the petitioner; Dr. Mankeshwar Siwani, learned AC to AAG-3 appearing on behalf of the State;

Mr. Pyush Lal, learned counsel appearing on behalf of the Patna High Court and Dr. Anand Kumar, learned counsel appearing on behalf of the Accountant General.

2. Learned counsel appearing on behalf of the petitioner submitted that petitioner is entitled for pension in terms of Bihar Pension Rules, 1950 after having completed 33 years of his service. However, petitioner has been denied the said benefit only on the ground that the Accountant General, Bihar has raised certain query vide letter dated 13.09.2021 addressed to the Drawing and Disbursing Officer, Civil Court, Gaya and in pursuant to the said query the Drawing and Disbursing Officer, Civil Court, Gaya had communicated that petitioner has qualified 33 years of service in accordance with the provision of Bihar Pension Rules, 1950. After qualifying the pensionable service period, the petitioner is entitled for pension. The Accountant General, Bihar has again made the same query vide Memo No.1722 dated 14.02.2022 to be clarified by the Drawing and Disbursing Officer, Civil Court, Gaya.

3. Mr. Pyush Lal, learned counsel appearing on behalf of the Patna High Court has submitted that the query of Accountant General, Bihar is misconceived and clarifies that the Rule 57 of Bihar Pension Rules, 1950 provides as follows:

"For a Government servant in inferior service,

> *qualifying service, shall not begin until the Government servant concerned attained the age of 16 years."*

4. For a Government servant in inferior service, qualifying service, shall not begin until the Government servant concerned attained the age of 16 years. In the present case, the petitioner was appointed on 02.09.1976. Amendment was brought in Bihar Pension Rules, 1950 by which the age was raised from 16 to 18 years in case of Government employee belonging to the inferior service. Learned counsel further submitted that on perusal of the Appendix 5 to the Bihar Pension Rules, 1950 the age has been enhanced from 16 to 18 years. He however is not able to give the specific date when the amendment was brought**.** He next submitted that in any manner the only requirement which has to be taken into considering for fixation of pension of the petitioner as to whether the petitioner has completed 33 years of qualifying service in accordance with the amended or un-amended provision with respect to enhancement of age from 16 years to 18 years. In the present case, even after deeming the age of the petitioner to be 18 years at the time of his appointment, he has completed the qualifying service. Otherwise also if it is calculated taking entry in service at the age of 16 years (i.e. on the date of his appointment), the petitioner has rendered 44 years of service from his date of appointment i.e. 02.09.1976.

5. Learned counsel further submitted that the Bihar Pension Rules is applicable to the employees of the Bihar Civil Court and the petitioner has admittedly completed 33 years of pensionable service from both the age, (i.e 16 or 18 years) is entitled for fixation of his pension on the basis of last pay drawn by him.

6. *Per contra*, learned counsel appearing on behalf of the State submitted that it would be advisable for the Accountant General, Bihar to fix the pension of the petitioner considering the admitted fact that the petitioner has completed 33 years of service which is maximum requirement for fixation of pension and the petitioner having been completed the same, the query raised by the Accountant General is misconceived.

7. Dr. Anand Kumar, learned counsel appearing on behalf of the Accountant General submitted that it would be in the interest of justice that the Accountant General, Bihar, may be directed to fix the pension of the petitioner considering the maximum qualifying period of service being 33 years. In the present case, the petitioner has completed more than that period considering both the age for qualifying service in accordance

with Rule 57 of the Bihar Pension Rules, 1950, which later on was amended and the minimum age for calculating the pensionable service treating 18 years as entry into the service.

8. Heard the parties.

9.The undisputed facts of the case are that the petitioner was appointed on the post of Peon, in Civil Court, Gaya on 02.09.1976, at 16 years of age. It is not in dispute that on the date of appointment of the petitioner, that is, 02.09.1976 there was no minimum age prescribed for appointment to the post of Peon. However, the minimum age of entry into pensionable service was 16 years. This meant that the period of service of an employee before attaining the age of 16 years, would not count towards pension. It is not disputed that the petitioner’s date of birth is 02.10.1960 as per the records. The petitioner’s date of birth being 02.10.1960 and treating the said date of birth he has completed sixty years of age on 02.10.2020.

10. The terms and conditions of service of employees of the Civil Court, Gaya are governed by the Bihar Service Code. Rule 73 of the Bihar Service Code, inter alia, provides that “*the date of compulsory retirement of a government servant is the date on which he attains the age of 58 years. He may be retained in service after the date of*

compulsory retirement with the sanction of the State Government on public grounds, which must be recorded in writing". This provision under Rule 73 was amended by notification No.1979 dated 29.03.2006 of Finance Department, Bihar whereby, the compulsory age of retirement was raised from 58 years to 60 years.

11. By a Government Circular dated 15.1.1998 issued by the Personnel and Administrative Reforms Department of the State of Bihar, the minimum age for appointment to an inferior service under the Government of Bihar was fixed at 18 years. The said circular, fixing the minimum age for appointment at 18 years, which was issued almost 22 years after the appointment of the petitioner, was applied prospectively only to the appointments made after issuance of the said circular. Much prior to the petitioner's appointment in service of the Civil Court, Gaya Rule 5 in Appendix 5 of the Bihar Pension Rules was amended. The qualifying age of government servants for consideration of pensionary benefits was raised from 16 to 18 years. The raising of the minimum qualifying age of the government servant for pensionable service, from 16 to 18 years, meant that if an employee entered into service before attaining the age of 18

years, the period of service from the actual date of appointment till attainment of the qualifying age for pensionable service, would not count for the purpose of computation of pension/pensionary benefits.

12. Rule 5 in Appendix 5 of the Bihar Pension Rules prescribing the qualifying age of the government servant for consideration of pensionary benefits and/or raising of such age from 16 years to 18 years makes no difference to the age of retirement prescribed under the Rule 73 of the Bihar Service Code. Rule 73 of the Bihar Service Code prescribes an age of retirement. The said Rule does not make length of service a criteria for retirement. The age of retirement and qualifying service for the purpose of retirement benefits are not one and the same. Qualifying service for retirement means that the length of service for the purpose of computation of retiral benefits would commence from attainment of the age of qualifying service of pension. Thus, if the age of qualifying service for pension is 18 years, the length of service for computation of pensionary benefits would have to be computed from the date of attainment of 18 years of age. However, if the prescribed age of retirement is completion of 60 years, an employee cannot be forced to retire before attaining that age except on grounds provided in

Service Rules. A person can only be retired on attainment of the prescribed age of retirement unless the rules expressly make length of service a criteria of retirement. In this case Rule 73 of the Bihar Service Code does not prescribe any length of service as criteria for retirement. The prescribed age of retirement for employees of the category to which the appellant belonged was 58 years, later increased to 60 years.

13.The fact that an employee may have been a minor at the time of his initial appointment is insignificant in the absence of any law at the time of his appointment, prohibiting appointment of 16 year old minors. An employer who knowingly appoints minors with impunity, with its eyes open, cannot evade its obligations under the contract of employment, and that too after the employee has rendered service after attaining majority.

14. The Letter No. 12978 dated 19.09.2019 published by the General Administration Department, Govt. of Bihar in the year 2019 which provided that the maximum length of service of a government employee would be 42 years i.e. entry age 18 and retirement age 60 years, could have no manner of application to appointments that had already been made before the said letter was issued, and certainly not to

appointments made almost three decades before issuance of the aforesaid letter, at a time when admittedly there was no minimum age for appointment to government service.

15. The matter relating to age of superaanuation vis-a`-vis qualifying service for retirement/retiral/pensionary benefits was considered by the Hon'ble Supreme Court in the case of ***Gopal Prasad v. Bihar School Examination Board & Ors.*** reported in ***(2020) 18 SCC 255***, observations have been made:

> *" **48.** In my view, the interpretation of the Full Bench of Rule 73 of the Bihar Service Code in Ragjawa Narayan Mishra [Ragjawa Narayan Mishra v. Bihar Rajya Khadi Gramoudyog Board, 2005 SCC OnLine Pat 978 : (2006) 1 PLJR 410] is misconceived and erroneous. The counsel appearing on behalf of the appellant has rightly argued that there is no rule which prescribes the length of service as a criteria for superannuation. Neither Rule 73 of the Bihar Service Code, nor Rule 57 of the Bihar Pension Rules, 1950 prescribed any limit to the length of service.*
>
> ***49.** The Full Bench [Ragjawa Narayan Mishra v. Bihar Rajya Khadi Gramoudyog Board, 2005 SCC OnLine Pat 978 : (2006) 1 PLJR 410] fell in error in proceeding on the basis of the length of service, when Rule 73 of the Bihar Service Code prescribes a specific age of superannuation. As argued on behalf of the appellant, Rule 73 of the Bihar Service Code prescribes an age of retirement. The said Rule does not make length of service a criteria for retirement.*
>
> ***51.** In Ragjawa Narayan Mishra [Ragjawa Narayan Mishra v. Bihar Rajya Khadi*

Gramoudyog Board, 2005 SCC OnLine Pat 978 : (2006) 1 PLJR 410] , the Full Bench failed to appreciate that the Circular of 1998 could have no manner of application to appointments that had already been made before the said circular was issued, and certainly not to appointments made almost two decades before issuance of the aforesaid circular, at a time when admittedly there was no minimum age for appointment to government service. Even assuming that the total length of government service for pensionary benefits cannot exceed the length of time between the date of attaining of 18 years and the attainment of age of 58/60 years as per Rule 73, that would mean that pensionary benefits would have to be computed on the basis of the length of service after completion of 18 years of age. In no case can an employee be retired before attaining 58 and/or 60 years of age, as prescribed in Rule 73 of the Bihar Service Code.

***67.** I am of the view that the appeal should be allowed and the judgment and order [Gopal Prasad v. Bihar School Examination Board, 2012 SCC OnLine Pat 1735] of the Division Bench and the Single Bench [Gopal Prasad v. Bihar School Examination Board, 2012 SCC OnLine Pat 1734] be set aside. The appellant is entitled to a declaration that the appellant was entitled to continue in service till 18-11-2014, being the date on which he completed 60 years of age, as per his service records, and shall be entitled to all consequential benefits including arrears of pay, if any, pensionary benefits, etc."*

16. The case of Gopal Prasad *(supra)* was referred to the larger Bench of the Apex Court. The Hon'ble Supreme Court's larger Bench confirmed the view in its earlier judgement dated 28.05.2020, by making following observation -

> “ *Thus, we are of the view that there is no need to answer the reference arising from divergence of opinion of two Hon’ble Judges…*”

17. In the above circumstances and the law laid down by the Apex Court in the case of *Gopal Prasad (supra),* it is made clear that the misconceived objection raised by the Accountant General, Bihar has only delayed the matter in fixation of pension of the petitioner by misinterpreting the Rules governing entitlement of pension, but at the same time petitioner has been harassed by not being given his legal dues. The Accountant General is directed to clarify himself that in future he may not raise misconceived objection to deprive any of the employee of the Civil Court in particular retired Government servant and employee of the Board and Corporation in whose case the Bihar Pension Rule is applicable.

18.The Accountant General, Bihar is directed to fix the pension of the petitioner considering the minimum period of pensionable service considering the age of the petitioner from 18 years till the date of his retirement. It is admitted that the petitioner had completed 44 years of service and as such the Accountant General, Bihar is directed to fix the pension/ commutation of pension of petitioner as applicable on the basis of available records in accordance with law and issue authority letter within a period of six weeks from the date of communication of this order.

19. The petitioner is also entitled for gratuity, leave encashment, group insurance and provident fund along with the statutory interest in case, if the entire amount has not been paid to the petitioner till date.

20. The Treasury Officer is accordingly directed to credit entire amount into the bank account of the petitioner within a period of one week from the date he receives authority from the Accountant General, Bihar into the bank account of the petitioner.

21. With above observation and direction, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-
Nilmani/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.08.2023
Transmission Date	N/A