

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.109 of 2019

In
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

... .. Appellant/s

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

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Parasmani, Advocate
For the State : Mr. Priyadarshi Matri Sharan, AC to AAG-15
For B.R.A. Bihar University: Mr. Indrajesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 12-02-2024

The present Letters Patent Appeal has been filed under Clause-X of the Letters Patent of Patna High Court against the order dated 19.12.2018, passed by the learned Single Judge of this Court in C.W.J.C. No. 17567 of 2017, whereby the learned Single Judge has dismissed the petition filed by the present appellant/original petitioner.



2. Heard Mr. Sanjay Parasmani, learned counsel appearing for the appellant/original petitioner, Mr .Priyadarshi Matri Sharan, learned AC to ASG-15 for the respondent State and Mr. Indraresh Kumar, learned counsel appearing for the respondent B.R.A. Bihar University.

3. Learned counsel for the appellant/original petitioner submits that the petitioner was appointed against sanctioned vacant post of medical officers in B.R.A. Bihar University, Muzaffarpur in the year 1979. Thereafter, on 22.12.2011, the State Government decided to enhance the age of superannuation of the Government doctors from 62 years to 65 years. Thereafter, the Hon'ble Supreme Court, in Civil Appeal No. 516 of 2013 passed an order on 18.01.2013 that the State Government is bound to give equivalent treatment to the non-teaching staff of the University as given to the employees of the State. Therefore, the State Government decided to give similar treatment to the doctors of the University on 05.04.2014, whereby the age of retirement of University doctors was enhanced to 65 years. Thereafter, on 30th July, 2015, the State Government of Bihar enhanced the age of retirement of Government doctors from 65 years to 67 years and, therefore, the petitioner made representation before the Vice Chancellor of



the University on 21.01.2016, whereby a request was made to enhance the age of superannuation to 67 years. Pursuant to the said representation, the Registrar of the University wrote to the Secretary, Higher Education, Government of Bihar seeking necessary direction. However, no decision was taken by the respondent authorities and, therefore, the petitioner filed C.W.J.C. No. 2651 of 2017. The learned Single Judge of this Court disposed of the said writ petition vide order dated 14.07.2017 and a direction was issued to the Principal Secretary, Department of Education, Government of Bihar as well as the Principal Secretary, Department of Labour, Government of Bihar to take a final decision on the representation made by the petitioner. Again, on 06.09.2017, the petitioner submitted a representation to the Principal Secretary, Department of Education, Government of Bihar for compliance of the order. However, the order dated 14.07.2017 passed by the learned Single Judge of this Court was not complied with. Hence, the petitioner was constrained to prefer an application under the Contempt of Courts Act by filing M.J.C. No. 2820 of 2017. Thereafter, on 25.09.2017, the Principal Secretary, Department of Human Resources, rejected the claim of the petitioner.

4. At this stage, learned counsel for the



appellant/original petitioner submitted that this Court was not satisfied with the rejection of the claim of the petitioner and, therefore, granted time to the State authorities to take a decision. Ultimately, on 20th November, 2017, the respondent authority passed a resolution whereby the age of superannuation of the medical officers of the University has been enhanced from 65 to 67 years with immediate effect. It is submitted that thereafter this Court disposed of M.J.C. No. 2820 of 2016 vide order dated 22.11.2017 and the liberty was granted to the petitioner to pursue appropriate remedy. Petitioner has, therefore, preferred the captioned petition before this Court. Learned counsel for the appellant/original petitioner would mainly submit that though the respondent authority has taken the decision pursuant to the representation made by the petitioner, whereby the age of superannuation of the medical officers of the University came to be enhanced from 65 to 67 years, benefit of the same was not given to the petitioner mainly on the ground that in the meantime the petitioner retired from service in September, 2017. Petitioner has, therefore, filed the petition, as stated hereinabove. It is contended that on the basis of the representation of the petitioner only, such decision was taken by the respondent authority and, therefore, the benefit of the same



ought to have been granted to the petitioner. However, the learned Single Judge has dismissed the petition and, therefore, the present appeal has been filed.

5. On the other hand, learned counsels for the respondents have opposed this appeal by contending that the learned Single Judge has considered the relevant aspects of the matter and taken note of the fact that the petitioner has, in the meantime, retired from service in September, 2017, whereas the resolution has been issued by the respondent State on 20.11.2017 and, therefore, the said resolution would not be applicable retrospectively and, hence, no error has been committed by the respondent authority as well as the learned Single Judge by not entertaining the request made by the petitioner. Learned counsel, therefore, urged that the present appeal be dismissed.

6. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the material placed on record. It would emerge from the record that the petitioner made representation to the respondent authority with a request that the age of superannuation be enhanced to 67 years. However, no decision was taken by the respondent authority and, therefore, petitioner initially filed



C.W.J.C. No. 2651 of 2017. It is pertinent to note that the learned Single Judge of this Court did not specifically give direction to the authority to grant such benefit to the petitioner, however, the direction was issued to decide the representation of the petitioner. No doubt, the respondent authority took some time in taking the decision. However, fact remains that the respondent State has now passed the resolution on 20th November, 2017 whereby now it has been decided to increase/enhance the age of superannuation from 65 to 67 years of the medical officers of the University. It is also not in dispute that, in the meantime, petitioner has retired from service in September, 2017 i.e. prior to the date of resolution issued by the respondent State. The said resolution cannot be applicable retrospectively. It is also pertinent to note that the petitioner filed the captioned petition in the year 2017 only. Learned Single Judge has not granted any interim relief in favour of the petitioner.

7. We have also gone through the reasoning recorded by the learned Single Judge and we are of the view that the learned Single Judge has not committed any error while dismissing the petition filed by the present appellant/original petitioner and, hence, no interference is required in the present



appeal.

8. Accordingly, this appeal is dismissed.

(Vipul M. Pancholi, J)

(Sunil Kumar Panwar, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
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