

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.127 of 2020

In
Civil Writ Jurisdiction Case No.922 of 2020

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Mahesh Prasad Singh Son of Kapil Deo Singh Resident of Near Royal Academy, Alkapuri, Bhagwanpur, Muzaffarpur, District- Muzaffarpur, Pin Code- 842001

... .. Appellant

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. B.R. Ambedkar Bihar University, Muzaffarpur through its Registrar.
3. Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
4. Registrar, B.R. Ambedkar Bihar University, Muzaffarpur.
5. Principal, Rameshwar College, Muzaffarpur.

... .. Respondents

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Appearance :

For the Appellant : Mr. Abhinav Srivastava, Advocate
For the Respondent State: Mr. Shashi Shekhar Tiwary, AC to AAG-15
For the Respondent University: Mr. Viveka Nand Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 25-09-2024

The present appeal has been filed under Clause 10 of the Letters Patent Appeal of the Patna High Court Rules against the order dated 16.01.2020 passed by the learned Single Judge in CWJC No. 922 of 2020, whereby the learned Single Judge has dismissed the writ application filed by the appellant.

2. Heard Mr. Abhinav Srivastava, learned counsel for the appellant, Mr. Shashi Shekhar Tiwary, learned Assistant Counsel to AAG-15 for the respondent-State and Mr. Viveka Nand



Singh, learned counsel appearing on behalf of the respondent B.R. Ambedkar Bihar University.

3. The brief facts leading to filing of the present appeal are as under: -

3.1. The appellant/original petitioner was appointed vide letter No. 04.08.1975 against the post of Peon in Rameshwar College, Muzaffarpur, an affiliated college of the then Bihar University, and he joined his service on 08.08.1975. The said College was subsequently taken over as a constituent unit of the University.

3.2. The appellant was continuing in the service of the College since his appointment. The Principal of the college, vide letter dated 09.09.2019, addressed to the Registrar of the University, furnished a list of teaching/non-teaching employees of the college, who were to retire in the year 2019-20, in which name of the petitioner also figured and he was shown to be retiring on 31.08.2019 on completion of 44 years of service.

3.3. The appellant thereafter submitted a detailed representation dated 09.09.2019 before the concerned authorities of the University referring to the provision of Section 67(a) of the Bihar State Universities Act and the Judgment passed by this Court



and requested that he be allowed to continue in service until he attained the age of 62 years.

3.4. Thereafter, the University vide letter dated 27.09.2019 directed the Principal of the College to furnish the service details of the appellant. In response to the aforesaid letter, the Principal vide letter dated 17.10.2019 furnished the service details of the appellant, wherein it was mentioned that the date of the birth of the appellant is 14.08.1959 and he was appointed on 08.08.1975. Therefore, on completion of 44 years of service, the appellant would superannuate on 31.08.2019.

3.5. The appellant, by the impugned office order dated 09.11.2019 issued by the Registrar of the University, was shown to have retired from service of the College on 31.08.2019. Being aggrieved by the said order, the appellant preferred the captioned writ application putting to challenge the said Office Order dated 09.11.2019 bearing Memo No. B/2217.

3.6. The learned Single Judge rejected the writ application filed by the appellant/original petitioner observing that there is no merit in the petition since the petitioner has been made to retire from service after having served for 44 years.

4. Learned counsel for the appellant has mainly submitted that while passing the impugned order dated 09.11.2019,



whereby the appellant has been made to retire from service with effect from 31.08.2019, the concerned authorities have not considered the representation filed by the appellant. It was the specific case of the appellant that Section 67(a) of the Bihar State Universities Act, 1976 contains the provisions with respect to the age of retirement of teaching as well as non-teaching employees in the service of the Universities within the State of Bihar and the age of retirement of non-teaching employees is 62 years. At this stage, learned counsel for the appellant would submit that considering the date of birth of the appellant being 14.08.1959, he would superannuate on attaining the age of 62 years on 31.08.2021, whereas the appellant has been made to retire from service with effect from 31.08.2019 causing irreparable loss to the appellant, which fact has not been appreciated by the learned Single Judge while considering the writ application. Learned counsel for the appellant urged that this appeal may be allowed and the impugned order passed by the learned Single Judge may be quashed and set aside so also the impugned order passed by the respondent authorities.

5. On the other hand, learned counsel for the State Government and the respondent University have submitted that no fault can be found in the order passed by the respondent authorities



as the appellant has been made to retire after completion of 44 years service.

5.1. Learned counsel for the respondents has placed reliance upon the decision rendered by the Full Bench in the case of ***Ragjawa Nr. Mishra v. C.E.O., Bihar, R.K.G. Board***, reported in **2006(1) PLJR 410 [F.B.]**.

5.2. Learned counsel for the respondents has referred the counter affidavit filed on behalf of respondent No.1 and thereafter contended that allowing the appellant beyond 44 years of service would mean that he had joined the service before attaining majority, i.e., when the appellant was minor. It has been submitted that the issue of retiring a non-teaching employee after completing 44 years of service is not *res integra* as a learned Single Judge of this Court vide order dated 22.04.2009 passed in C.W.J.C. No. 11890 of 2005 (**Ganesh Sinha vs. The B.R.A. Bihar University and Others**) has dismissed similar type of petition relying upon the aforesaid decision rendered by the Full Bench of this Court. Learned counsel for the respondents, therefore, urged that this appeal be dismissed.

6. Having heard learned Advocates for the parties and having gone through the materials placed on record and the decision rendered by the Full Bench of this Court in the case of



Ragjawa Nr. Mishra (supra), it would emerge that the appellant joined the service as a Peon on 08.08.1975, i.e., when the appellant was minor, i.e., at the age of 16 years. Initially, he was appointed in the affiliated college of the then Bihar University, however, the said college was subsequently taken over as the constituent unit of the University. The appellant was continuing in service of the college since his appointment. However, the grievance of the appellant is that vide impugned communication dated 09.09.2019, addressed by the Principal of the College to the Registrar of the University, a list of teaching/non-teaching employees of the college, who were to retire in the year 2019-20, has been furnished. The name of the appellant also figured in the said communication and he was shown to be retiring on 31.08.2019 on completion of 44 years of service. No doubt, learned counsel for the appellant has placed reliance upon the provisions contained in Section 67(a) of the Bihar State Universities Act, wherein it has been provided that the age of retirement of the non-teaching employee is 62 years, however, it is pertinent to note that it is not in dispute that the appellant joined the service when he was aged about 16 years and, therefore, he had completed 44 years of service on 31.08.2019.



6.1. It is the case of the appellant that the date of birth of the appellant, admittedly, being 14.08.1959, he would superannuate on attaining the age of 62 years on 31.08.2021, therefore, he may be permitted to continue in service till 31.08.2021.

6.3. Keeping in view the judgment of the Full Bench of this Court in the case of **Ragjawa Nr. Mishra** (supra), we are of the view that the issue involved in the present appeal is no more *res integra*. The Full Bench of this Court has held in paragraphs no. 16, 17 and 18 of the said judgment as under: -

“16. Be that as it may, one thing is certain that admittedly both the petitioners when they entered into the contract with the respondent Board they had not attained the age of majority. Apart from its legal impact and effect, the ramifications and end result on the status of a contract in terms of the service relationship, a person could be said to have entered into a valid service, only, when he has attained the age of majority. So the minimum age prescribed at the entry point in the Government service has been 18 years. The maximum age prescribed for the exit point is 58 years. In other words, the total length of period of Government service in any case for pensionary benefits would not exceed 40 years. It is in this context, the Government Circular mentioned herein above needs to be considered. When there is a clear Rule provision anything contrary to or inconsistent with or incompatible to it, any circular or resolution or order, will not have any legal and valid effect to abridge the right enshrined in the Rule Provision.



Even if the said circular of 1998 as relied upon by the petitioners is considered to be beneficial to them, then, also, it cannot be read at this juncture with the existing statutory provision incorporated in the Bihar Pension Rules, as well as, the Bihar Service Code. Therefore, from that point of view also the petitioners cannot be allowed to contend that they have right to continue even beyond the age of 58 years though provided in Rule 73 of the Bihar Service Code which prescribes the superannuation age of 58 years.

17. Thirdly, it is settled and established proposition of law and principles of jurisprudence that a person who takes undue advantage by one or other reasons at the entry point in the service cannot be allowed to urge that he be given higher benefit and if it is urged then, clearly, it goes to show that something wrong or irregular has been done, at the entry point, in service. So the settled principle, also, creates a very strong impediment in getting the relief from this Court which is exercising extraordinary, prerogative, equitable and discretionary writ jurisdiction by invocation of the provision of Article 226 of the Constitution of India.

18. In our opinion, therefore, the impugned orders questioned in both the writ petitions, obviously, cannot be interfered with from any point of view as discussed hereinabove. The proposition of law, therefore, is made evident and unambiguous that the superannuation age prescribed in Rule 73 of the Bihar Service Code will apply for retirement purpose and a person cannot be continued beyond the age of completion of 40 years in service. It is, therefore, evidently, clear that a Government servant who has completed 40 years of service or has attained the age of 58 years has to be superannuated in terms of the existing Rule provision. Our answer, therefore, is very clear and we answer this reference accordingly. The contradictory view in the aforesaid decisions referred to hereinabove, shall not be a good law.”



6.4. Even another learned Single Judge, relying upon the aforesaid decision rendered by the Full Bench, in similar type of matter, in the case of **Ganesh Sinha** (supra), observed as under: -

“This Court, therefore, following the ratio of the Full Bench Judgment of this Court in the case of Ragiawa Narayan Mishra (supra) must hold that the decision of the University in the impugned order does not suffer from any infirmity factual or legal, and as such the impugned order superannuating the petitioner on completing 44 years of his service in College with effect from 18th of August, 2004 cannot be interfered.

As a matter of fact, the University has been rather kind and considerate to the petitioner because admittedly the petitioner had been appointed in the College for the first time on 2.2.1957 and if the 44 years period is reckoned from that date, the petitioner's retirement could have been made effective with effect from February, 2001. The petitioner has in fact got benefitted of a period of three years service even for the purposes of counting of his length of service for calculation of his pension and post retirement benefit and should be thankful to his stars because had the University acted upon the entries made in the service book, the petitioner could have been in fact made to retire with effect from February, 2001.”

6.5. Thus, in the present case, it is not in dispute, looking to the date of birth of the appellant, being 14.08.1959, that he was appointed on 08.08.1975 at the age of 16 years and, therefore, he had completed 44 years of service on 31.08.2019.



Thus, we are of the view that the present case is squarely covered by the aforesaid decision rendered by the Full Bench as well as the order passed by the learned Single Judge.

7. In view of the aforesaid discussion, we are of the view that the learned Single Judge has not committed any error while dismissing the writ application filed by the present appellant/original petitioner. Hence, no interference is required in the present appeal, which is accordingly dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Pawan/-

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