

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9340 of 2019

Shiv Kumar Prasad Son of Late Amrit Prasad Resident of Mohalla- West
Shastri Nagar, Police Station- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, government of Bihar, Patna.
2. The Secretary Department of Education, government of Bihar, Patna.
3. The Director Department of Secondary Education, government of Bihar, Patna.
4. The Divisional Commissioner Patna Division, patna.
5. The Regional Deputy Director of Education Patna Division, Patna.
6. The Collector Nalanda.
7. The District Programme Officer Nalanda.
8. The District Education Officer Nalanda.
9. The Head Master R D H Plus-2 School, Rajgir, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Virendra Prasad
For the Respondent/s	:	Mrs.Binita Singh (Sc28)
		Mr.Nishant Kumar Jha, AC to SC-28

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 15-04-2024

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ application has been filed for quashing
of order no.97 dated 10.12.2015 (as contained in Annexure-3 of
the writ application) by which the Head Master of the School
directed the petitioner to retire w.e.f. 30.11.2015, ignoring the
Rule 73 of Bihar Service Code.

3. The short fact of the case is that the petitioner passed his



Matriculation exam in the year, 1973 and soon thereafter, the Governing Body of the School i.e. Sardar Vallabh Bhai Patel High School, Gangati, advertised the post of Assistant Clerk. The petitioner applied for the said post and was selected as Assistant Clerk vide Memo No.25 dated 28.10.1973. The petitioner submitted his joining before the Secretary/Head Master of the School on 08.11.1973. The Government of Bihar, Department of Education vide resolution no.9887-10013 dated 31.12.1980, took over 120 schools including the said school w.e.f. 2nd Oct, 1980. The petitioner was working from the date of recommendation in the School by the Management Committee and his services were transferred to R.D.H. Plus 2 School, Rajgir, Nalanda.

4. Suddenly, the Head Master of the School at Rajgir issued order no.97 dated 10.12.2015 stating therein to the petitioner that he is going to superannuate on 30.11.2015 as he has completed 42 years of service on that day and he was directed to hand over the charge.

5. Learned counsel for the petitioner submits that the order passed by the Head Master of the R.D.H. Plus 2 School, Rajgir, Nalanda is erroneous and bad in law as the petitioner was going to attain age of 60 years on 25.05.2016 and as per the Rule 73 of



Bihar Service Code, the petitioner was required to retire on 31.05.2016. It is submitted that the petitioner filed a representation before the Authority stating therein that as per Rule 73 of the Bihar Service Code, a Government employee can retire only after completion/attaining 60 years of age. The petitioner submitted an application before the District Education Officer, Nalanda on 04.01.2016 and 05.01.2016 requesting therein to stay the order of retirement passed by the Head Master of the School, ignoring section 73 of the Bihar Service Code. The petitioner also filed application before the Director, Secondary Education, Government of Bihar, Patna on 11.01.2016, stating the same grievance, whereby he was forcibly retired on 30.11.2015. He filed application before the Collector, Nalanda on 21.01.2016 regarding the same issue but no order was passed by the Collector, Nalanda.

6. It is further submitted that the Sub-Divisional Officer, Rajgir, wrote a letter vide letter no.181 dated 18.02.2016 to the District Education Officer, Nalanda regarding the application of the petitioner. He, later on, filed several representations in the year, 2017 before the concerned Authorities but no order was passed despite issuance of letters by the Authorities to take action on the representation of the petitioner. Learned counsel



for the petitioner has relied upon the Full Bench Judgment of the High Court of Jharkhand passed in L.P.A. No.262 of 2011, whereby, it was held that under Rule 73, the employees can retire only after attaining the age of 60 years. Therefore, the order passed by the Head Master, directing the petitioner to retire much before his actual date of retirement is not in accordance with law.

7. Per contra, learned counsel for the respondents submits that the order of superannuating the petitioner w.e.f. 30.11.2015 has been rightly passed by the Head Master of the School. A counter-affidavit has been filed on behalf of the respondent nos.7 and 8, wherein, in para-5, it is stated that the petitioner has passed Matriculation examination in the year, 1973 and in which, his date of birth was mentioned as 25.05.1956. He was initially appointed as Assistant/Clerk on 28.10.1973 and joined the Sardar Ballabh Bhai Patel School, Gangagati (Nalanda) on 08.11.1973. The Principal, RHD +2 School, Rajgir (Nalanda) sent a letter to the DEO, Nalanda and stated therein that the date of birth recorded in the service book of the petitioner is 25.05.1956 and he joined on 08.11.1973. From perusal of his service book, it appears that the age of the petitioner was 17 years 5 months 13 days at the time of joining, whereas the age



of joining was 18 years. From the date of joining, he completed 42 years of his service on 08.11.2015 i.e. 30.11.2015 and his date of retirement should be completed, if calculated on 60 years basis, on 08.05.2016 i.e. 31.05.2016 as per his date of birth. As such, as per Rule, the petitioner should be considered for retirement on completion of 42 years of service and not on completion of 60 years of age because as per Rule, a Government employee has to superannuate either on completion of 42 years of service or attaining the age of 60 years, whichever is earlier.

8. The DEO, Nalanda sent a letter to the concerned Headmaster that it is suitable and as per Rule to retire the petitioner on 30.11.2015 and directed the Head Master to provide application/ documents relating to retiral benefits of the petitioner vide memo no.107 dated 25.01.2016. Learned counsel for the respondents-State has relied upon the judgment passed in C.W.J.C. No.12495/2001 (**Md. Musa Ansari vs. The State of Bihar & Ors.**) by the learned Single Judge of this Court dated 27.11.2001, 1995(1) PLJR 183. Learned counsel for the State has further relied upon the judgment of the Apex Court in Civil Appeal No.8225/2012 (**Gopal Prasad vs. Bihar School Examination Board & Ors.**), whereby, the Apex Court has



opined that we may note a divergence of judicial opinion between the Patna High Court and the Jharkhand High Court- the Full Bench had opined in *Ragjawa Narayan Mishra vs. Bihar Rajya Khadi Gramoudyog Board (2005) SCC Online Pat* 978 that a person cannot continue beyond the age of completion of 40 years of service while the Division Bench of the High Court of Jharkhand took a contrary view.

9. Considering the argument of the parties and on perusal of the record, including the judgment passed by the Full Bench of the High Court of Jharkhand, in which at para-4, reliance has been placed upon the Full Bench Judgment of the Patna High Court in **Ragjawa Narayan Mishra Vs. The C.E.O., Bihar Rajya Khadi Gramoudyog Board & Ors.**, reported in **2006(1) PLJR 410**, wherein, the Patna High Court had laid down the following:-

*“That minimum age of entry in the Government Service being 18 years and maximum age prescribed for exit from service being 58 years (the prescribed age of superannuation as then was), the total length of period of Government service, in any case would not exceed 40 years and accordingly, the Full Bench of the Patna High Court has held 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 Rules. Reliance was placed upon a decision of a Division Bench of this Court in **Sri Raja Ram Sharma vs. Ranchi Municipal Corporation & Ors.**, reported in 2004 (2) JLJR (Jhr), which had taken the same view holding that the action of the*



*respondents in retiring the petitioner of the said case on completion of 40 years of service was legal and justified. While referring this matter to the larger Bench, the Division Bench of this Court also took note of yet another judgment of the Division Bench of this Court in **Ganesh Ram Vs. State of Jharkhand & Ors.**, reported in 2006(2) JCR 489 (Jhr.), in which, a contrary view was taken by this Court and it was held inter alia, that once the age of superannuation is prescribed, in absence of contrary rule; like completion of certain years of service, a regular employee cannot be retired prior to attaining the age of superannuation, except in the case of misconduct or on the ground of public interest/unsatisfactory service etc., as may be permissible under the rule(s).*

10. In view of these conflicting judgments on the same issue, the Division Bench of the Jharkhand High Court by order dated 09.01.2012 referred the questions as detailed above for determination by the Larger Bench.
11. Under the aforesaid facts and circumstances and considering the order passed by the Apex Court in Civil Appeal No.8225/2012, I do not find any merit in this writ petition.
12. The present writ application is accordingly dismissed being devoid of any merit.

(Anjani Kumar Sharan, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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