

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6315 of 2023

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Anuradha Devi W/o Late Baidhyanath Raut R/o Mohalla Teen Latten Chowk
Near Gurudwara, P.S. Bettiah Town, Dist.- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Bettiah West Champaran.
2. The Commissioner, Nagar Nigam Bettiah West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2, Advocate
For the Respondent/s : Mr. Yogendra Pd. Sinha, (AAG 7)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 02-12-2024 Heard Mr. Dhannjay Kumar No 2, learned counsel

 appearing on behalf of the petitioner and Mr. Yogendra Pd.

 Sinha, learned AAG 7 appearing on behalf of the State.

 2. The petitioner, in paragraph no. 1 of the present

 writ petition has sought, *inter alia*, the following relief(s), which

 is reproduced hereinafter:-

“(A). For issuance of writ/writs order/orders or direction/directions in nature of mandamus to quash the letter No.419 dated 03.04.2019 passed by respondent no.2 whereby and where under the respondent no.2 rejected the representation of petitioner which is filed in pursuance of order dated 14.03.2014 passed in CWJC No.3968/2014 by Hon’ble Mr. Justice Chakradhari Sharan Singh [Contain annexure 3]

(B). For issuance of writ/writs, order/orders, direction/ directions commanding the respondents for payment all in which the petitioner was retired on 31.12.2010 instead of 01.12.2013 by respondent no.2 forecfully on basis of wrongful entry in documents after making illegal cutting/manipulations service book in records.

(C). For issuance of any other appropriate writ/ writs order/orders direction/directions for which the employee found to be entitled in the facts and circumstances of case.”

3. Learned counsel appearing on behalf of the



petitioner submits that inspite of in compliance of the order passed in CWJC No.3968 of 2014, the Executive Officer, Nagar Parishad now Nagar Nigam, Bettiah (as contained in Letter No.419 dated 03.04.2019) has informed that as per the '*Prapatra Kha*' available with the Nagar Parishad, Bettiah, the date of birth of the petitioner is 05.12.1950 and on this basis of the claim of the petitioner has been rejected insofar as, date of birth as per the service book, according to the petitioner, is 05.12.1953. It is the case of the petitioner that from the order itself reflected that the petitioner was though given opportunity but in absence of any testimonial or any evidence relating to her date of birth, a request was made to provide service book of the petitioner and in absence of these documents, on the basis of entries made in the '*Prapatra Kha*', the respondents have made the petitioner to retire on 31.12.2020 in place of 31.12.2023 on the basis of records, as contained in the service book of the petitioner in respect of her date of birth to be 05.12.1953. On these grounds, learned counsel seeks interference of this Court, with the order passed by the Executive Officer, Nagar Parishad/Nagar Nigam, Bettiah.

4. *Per contra*, learned counsel appearing on behalf of the respondents referring to the order impugned submitted that



the order has been passed on the basis of the entries made in the 'Prapatra Kha' and the records available with the then Nagar Parishad and after providing the petitioner due opportunity of hearing, no interference can be drawn from the impugned order, so far as the date of retirement of the petitioner is concerned, on the basis of date of birth available on the record. Learned counsel further referring to the para-9 of the counter affidavit submitted that information relating to the approval of 5th and 6th Pay Revision from the State Government the benefit of 5th Pay Revision was extended to the petitioner and monetary benefit has already been given and a sum of Rs.4,47,355/- has already been sanctioned. The Treasury Officer has been requested to make payment, as would appear from the Annexure A and B to the counter affidavit. Subsequent to the said step in para-12, it has been informed that the inadmissible benefit, which the petitioner was incorrectly given, has been deducted from the total amount which was paid to the petitioner, amounting to Rs. 7,78,300/- and on this basis, learned counsel submitted that even though the petitioner is a Class- IV/Grade- D employee, the public money cannot be wasted in that manner, on the ground of alleged misappropriation made by the petitioner in the service book.



5. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the petitioner, who is a Class- IV/Grade- D employee, has filed the present writ petition, aggrieved by the total amount required to be recovered is Rs.3,30,945/- which was duly calculated and total admissible benefit on the basis of claim of the petitioner taking into account her date of birth to be 05.12.1953 and on the basis of record made available a calculation has been provided in para-12 of the counter affidavit, which is reproduced hereinafter:

*“12. That, in view of the above, the answering respondent has tried his best so that the admissible benefits may reach the petitioner. In all, petitioner was paid **Rs.7,78,300/-** [**3,30,945/-** +**Rs.4,47,355/-**].”*

As the same cannot be paid to the petitioner in absence of any proof of date of birth, I find that the petitioner should not be harassed in any manner, who is a Class- IV/Group- D employee and before any amount, so calculated in para-12 of the counter affidavit, the Executive Officer, Nagar Parishad, Betiah must proceed to provide due opportunity to the petitioner and call for all the records relating to the date of birth of the petitioner available, so that, no interpolation can be done by anyone, considering the fact that the petitioner is an illiterate lady. The only way left to the respondents is to verify at their



own level and don't further harass the petitioner, who, as per their own records, was made to retire in the year 2012 and as per the petitioner's claim was taken the date of birth to be 05.12.1953, she was to retire on 31.12.2023. It is further made clear that this Court has not gone into in any manner, so far as the maintainability of the writ petition is concerned. The law in this regard is well settled. He has further informed that the law regarding pension is well settled and he also realizes that pension is not a bounty, rather the same is property in view of Article 300 A of the Constitution of India, as held by the Apex Court in the case of **D.S. Nakara & Others. Vs. Union of India**, reported in **(1983) 1 SCC 305**.

6. The matter relating to age of superannuation 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.”

7. 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...”

8. Accordingly, the present writ petition stands disposed of.

9. Impugned Order contained in Memo No.419 dated 03.04.2019 is interfered to above extent. The Authority concerned must correct themselves and pass a reasoned order in accordance with law, on the basis of undisputed materials available with them.

(Purnendu Singh, J.)

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