

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13635 of 2012

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Jay Narayan Raut, Son of Late Ram Sunder Raut, at Present Posted as
Jamadar - Cum – Incharge, Sanitary Inspector, Nagar Parishad, Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Nagar Parishad, Sitamarhi through its Executive Officer.
3. Executive Officer, Nagar Parishad, Sitamarhi
4. Chief Medical Officer - cum - Civil Surgeon, Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Advocate. Ms. Swati Mishra, Advocate.
For the Nagar Parishad	:	Mr. Subodh Kumar, Advocate. Mr. S. K. Thakur, Advocate.
For the State	:	Mr. Ramashray Roy, AC to AAG-11.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 21-06-2024

Heard Mr. Yogendra Mishra, learned counsel along
with Ms. Swati Mishra, learned counsel appearing on behalf of
the petitioner; Mr. Subodh Kumar, learned counsel along with
Mr. S. K. Thakur, learned counsel for the Nagar Parishad and
Mr. Ramashray Roy, learned AC to AAG-11 for the State.

2. The petitioner has sought for the following
reliefs as prayed for in Para-1 of the writ petition, which are,
inter alia, reproduced hereinafter:

(i) An appropriate writ, order or direction
quashing the letter dated 18.06.2012 issued by the
respondent no.3 as contained in Annexure-5 be issued.

(ii) An appropriate writ, order or direction
commanding the respondents to allow the petitioner to
continue in service up to the age of sixty years as per



certificate be issued.

3. The petitioner has claimed that he was appointed on the post of sweeper in the year 1978. From year 1980, the respondent started deduction from his salary towards G.P.F. The petitioner is aggrieved by the alleged fictitious date of entry in service as on 10.07.1972. The respondent though maintained service book but had deliberately not entered the date of birth of the petitioner as it would appear from the entries made on 10.07.1972. It is claimed by the petitioner that as per the School Leaving Certificate (Annexure-1), the date of birth is 26.02.1962 and his date of joining is in the year 1980 and on the said basis the petitioner has claimed that his due date of retirement would be in the year 2022. However, he has been made to retire on 31.07.2012.

4. It is the case of the respondent that the petitioner had made an application in the year 1974, *inter alia*, stating that he had been working since last two years as sweeper and his name was also forwarded for regularizing his services and he had made an application for leave for the period from 26.07.1974 to 13.09.1974 and thereafter he received a notice of dismissal on 20.09.1974. The services of the petitioner was regularized after considering his application and request. It is the case of the respondent that in the service book of the



petitioner, the date of birth of the petitioner is mentioned as 01.07.1954 in column '6' and the petitioner has put his signature in column '10. Accordingly, he had put his thumb impression in column '9' and the petitioner has put his signature right below his date of appointment which is recorded as 10.07.1972. Certain facts are also given in detail with respect to the service condition and the manner in which the petitioner became entitled for pay revision, etc. But I find that the same is not required, so far as the main issue involved in the writ petition is concerned is date of superannuation of petitioner.

5. The claim of the petitioner is that even though his date of birth has been mentioned as 01.07.1954, he can only be made to retire considering the date of his attaining majority i.e. 18 years and on the date he attains the age of 60 years in view of Memo No. 347 of the Urban Development Department dated 11.02.2006.

6. The main issue involved in the present writ petition is no more *res integra* in view of law laid by the Apex Court in case of **Gopal Prasad Vs. Bihar School Examination Board and Others, (Civil Appeal No. 8225 of 2012)**, in which similar matter in connection with the employees of the Bihar School Examination Board. The Apex Court has carefully



examined the provision of Rule 73 of the Bihar Service Code and Circular issued by the Bihar School Examination Board adopting the government circular in respect of enhancement of age as well as the age on which a government employee can be appointed to be 18 years.

7. The Apex Court has distinguished the full Bench decision of this Court passed in the case of **Ragjawa Narayan Mishra Vs. The C.E.O., Bihar Rajya Khadi Gramoudyog Board & Ors.**, reported in **2006 (1) PLJR 410**.

8. In Para-31, the Apex Court has taken into consideration that 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 and it has been made clear that the same will not make any difference to the age of retirement prescribed under the Rule 73 of the Bihar Service Code.

9. It is apt to reproduce paragraph nos. 31 to 39 of the **Gopal Prasad (supra)**.

“31. With the greatest of respect to the Full Bench, I am unable to agree that 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 any difference to the age of retirement prescribed under the Rule 73 of the Bihar Service Code.

32. 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.

33. 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. For example, an employee may prematurely be retired by way of disciplinary action, if the rules so provide.

*34. When the age of retirement is governed by express rules, which do not prescribe length of service as a criteria of retirement, but provide for retirement upon attainment of age, an employee cannot be made to retire before attaining that age of retirement, only because he/she has served for a certain length of time, by a convoluted process of logical reasoning. My judicial conscience, also does not permit me to uphold the judgment under appeal, only because the High Court has, for a while, followed the Full Bench decision of that Court which has held the field for a while. The Full Bench decision was, in my opinion, erroneous. This Court has time and again reversed its own decisions including those of Constitutional Benches, which have held the field for decades. To cite an example, the Constitution Bench judgment of this Court in *Atiabari Tea Co. Ltd. v. State of Assam* [*Atiabari Tea Co. Ltd. v. State of Assam*, AIR 1961 SC 232] which held the field for almost half century was overruled by a judgment of nine-Judge Bench judgment in *Jindal Stainless Ltd. v. State of Haryana* [*Jindal Stainless Ltd. v. State of Haryana*, (2017) 12 SCC 1]. I see no reason why the judgment and order impugned [*Gopal Prasad v. Bihar School Examination Board*, 2012 SCC OnLine Pat 1735] should not be set aside.*

*35. The issues of whether a government servant could be superannuated from service on completion of 40 years of service even in the absence of any such rule, taking aid of Rule 73 of the Bihar Service Code, which only prescribed the age of superannuation and whether after completion of 40 years of service, a person could be retired from service, treating his age as 18 years at the time of entry in service, were considered by a Division Bench of the High Court of Jharkhand presided over by S.J. Mukhopadhyaya, J. in *Ganesh Ram v. State of Jharkhand* [*Ganesh Ram v. State of Jharkhand*, 2006 SCC OnLine Jhar 235 : (2006) 110 FLR 156] in the context of Rule 73 of the Bihar Service Code. The Bihar Service Code is applicable in the State of Jharkhand created pursuant to the Bihar Reorganisation Act, 2000, and comprising areas that were earlier in the State of Bihar. The issues were answered in the negative in favour of the employees and against the State of Jharkhand*



and others. A copy of the judgment in Ganesh Ram [Ganesh Ram v. State of Jharkhand, 2006 SCC OnLine Jhar 235 : (2006) 110 FLR 156] is also annexed to the paper book as Annexure P-5.

36. In Ganesh Ram [Ganesh Ram v. State of Jharkhand, 2006 SCC OnLine Jhar 235 : (2006) 110 FLR 156] the Court found, and rightly, that there was no common minimum age of 18 years prescribed by the State of Bihar for appointment to service of the State, or in the State of Jharkhand. The minimum eligibility age varied from job to job. The Court observed and held : (SCC OnLine Jhar para 8)

“7. ... The definition of “employee”, as laid down under Section 2(i) of the Act, means any person, who is employed for hire or reward or to do any work, skilled or unskilled, etc. and also includes an employee, employed by the appropriate Government i.e. State Government or Central Government. Clause (a) to Section 2 defines “adolescent” means a person, who has completed his fourteenth year of age but has not completed his eighteenth year. “Adult” has been defined under clause (aa) of Section 2, which means a person, who has completed his eighteenth year of age and “child”, as defined under clause (bb) of Section 2, means a person, who has not completed his fourteenth year of age. Section 3 of the Minimum Wages Act, 1948 while prescribes the manner in which the appropriate Government will fix the minimum rates of wages, under sub-section (3) appropriate Government is empowered to fix different minimum rates of wages for “adults”, “adolescent”, “children” and “apprentices”. This simply shows that even in the government employment, an “adolescent”, though minor, can be appointed for whom different wages may be fixed.”

The High Court further noted :

“8. The State of Bihar has issued Police Order No. 209-82, circulated vide Memo No. 6568/P2/43-271-88, dated 11-8-1988. This Police Order is also applicable in the State of Jharkhand, in view of Section 84 of the Bihar Reorganisation Act, 2000. As per this Order, in every district, out of the sanctioned strength of police force, two posts can be reserved in which dependent children of police force, below 18 years of age, can be appointed on compassionate ground, if the police personnel dies while on duty. Those children, so appointed, are commonly known as “Bal-Arakshi” and are paid minimum of the scale of pay of the post, without



annual increment, till they attain majority. It is only on attaining majority, if the “Bal-Arakshi” so wishes and is qualified, they are appointed as Constables against such posts. These children, on appointment, are provided with two half-pants, two shirts, two sets of socks, one pair of shoes, etc. This simply goes to show that there is no bar on appointment of a minor in the services of the State.”

37. Of course, as noted in the judgment in *Ganesh Ram* [*Ganesh Ram v. State of Jharkhand*, 2006 SCC OnLine Jhar 235 : (2006) 110 FLR 156] after the enactment and enforcement of the Child Labour (Prohibition and Regulation) Act, 1986, employment of a child which means a person who has not completed 14 years of age is prohibited for certain types of work. However, the said Child Labour (Prohibition and Regulation) Act, 1986 is of no application in this case, because the petitioner was appointed long before the enactment and enforcement of the said Act and in any case he was above 14 years of age at the time of appointment.

38. The issue of whether an employee could be made to retire before completion of actual age of retirement as prescribed in Rule 73 of the Bihar Service Code on the basis of a deemed age was answered in the negative, against an employer and in favour of the employee in the following cases referred to in *Ganesh Ram* (supra):-

1. *Mokhtar Ahmad v. B.S.R.T.C. and Ors.* (1995) 1 PLJR 183 (DB)
2. *Mantu v. C.C.L.* (2001) 1 JCR 181]
3. *Kalanand Jha v. State of Jharkhand and Ors.*, (2001) 3 JCR 228)
4. *Balkeshwar v. Central Coalfields Ltd.*, (2002) 1 JCR 175
5. *Pranadhar Prasad v. State of Jharkhand and Ors.* (MANU/JH/1137/2002).

39. I am of the view that the law has correctly been interpreted by the Division Bench of the High Court of Jharkhand in *Ganesh Ram* [*Ganesh Ram v. State of Jharkhand*, 2006 SCC OnLine Jhar 235 : (2006) 110 FLR 156] . 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, as in the case of employees of the Bihar State Electricity Board, governed by the Notification dated 9-9-1997, issued under Section 79(c) of the Electricity (Supply) Act, 1948, under which the date of superannuation prescribed was completion of 60 years of age or completion of 42 years of service, whichever is earlier.”



10. Finally the Apex Court has concluded in Paragraph No. 43 of the said judgment. The same is reproduced hereinafter:

“43. As observed above, 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. The decision of the respondents to retire the appellant before he attained the age of 60 years as per his actual date of birth, as recorded in the service records cannot be sustained.”

11. Considering the conclusion derived by the Apex Court that the petitioner who has been made to retire in the year 2014 before he has attained the age of 60 years as per his actual date of birth as recorded in the service book cannot be sustained.

12. I find different entries in Annexure-7 to the writ petition and Annexure R-3 to the counter affidavit, in column no.6, the date of birth has been left vacant and entered as 01.07.1954 respectively. However, the thumb impression of the petitioner and his signature in column no.10 and 11 are intact and the same has been endorsed by the Executive Officer of the Nagar Parishad, Sitamarhi, which may have been interpolated by playing with the official records. The matter being serious one, I direct the Divisional Commissioner to maintain sanctity at the Nagar Parishad Office and to call for the records and take appropriate action against all those who are involved in such interpolation of the official records and placing the same before



this Court as it would appear from Annexure – 7 to the writ petition and Annexure R/3 to the counter affidavit filed on behalf of respondent nos. 2 and 3.

13. The Divisional Commissioner must arrive at the specific finding as to whether there is any involvement of the petitioner in bringing on record by way of interpolation in service book which is annexed as Annexure-7 or whether any of the authority of Nagar Parishad Sitamarhi is involved in such *mal pratice* and had played fraud with the records of the Nagar Parishad, Sitamarhi.

14. The writ petition will be subject to the result of the definite finding in regard to interpolation of government records.

15. Accordingly, the writ petition stands disposed of, but in circumstances of the case, there shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	25.06.2024
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