

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6460 of 2020

Kishori Mandal S/o Late Sahdeo Mandal, R/o Mohalla - Lalkothi, Tatarpur,
P.S. Tatarpur, Town and District- Bhagalpur.

... .. Petitioner/s

Versus

1. The T.M. Bhagalpur University, Bhagalpur through its Registrar.
2. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur.
3. The Financial Advisor, T.M. Bhagalpur University, Bhagalpur.
4. The Registrar, T.M. Bhagalpur University, Bhagalpur.
5. The Finance Officer, T.M. Bhagalpur University, Bhagalpur.
6. The Superintendent/Manager, T.M. Bhagalpur University Press, Bhagalpur.
7. The State of Bihar, through the Additional Chief Secretary, Education
Department, Government of Bihar, New Secretariat, Patna.
8. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
9. The Hon'ble Chancellor of Universities, through its Principal Secretary, Raj
Bhawan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate Mr. Ram Naresh Jha, Advocate Mr. Bishwash Vijeta, Advocate
For the Respondent/s	:	Ms. Binita Singh, SC 28 Mr. Kumar Kamal Nayan, AC to SC 28
For the University	:	Mr. Dr. Anand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 15-07-2025

Heard Mr. Purushottam Kumar Jha, along with Mr.



Ram Naresh Jha and Mr. Bishwash Vijeta, learned counsels appearing on behalf of the petitioner; Ms. Binita Singh, learned SC 28 along with Mr. Kumar Kamal Nayan, learned AC to SC 28 for the State and Mr. Dr. Anand Kumar, learned counsel appearing on behalf of the T.M. Bhagalpur University, Bhagalpur.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

“(i) Issuance of an Order, Direction or a Writ in the nature of Certiorari quashing Office Order No. 89/2020 dated 04.05.2020 issued by the Registrar of the T.M.Bhagalpur University, Bhagalpur, whereby the petitioner has not only been made to retire from the services of the T.M.Bhagalpur University Press with retrospective effect from 31.08.2018 but thereby it has further been ordered for the recovery of the amount of salary paid to the petitioner after 31.08.2018.

A true copy of Office Order No. 89/2020 dated 04.05.2020 is annexed as Annexure-1 to this writ petition.

(ii) Issuance of an Order, Direction or a Writ in the nature of Mandamus commanding the Respondents concerned to treat the petitioner in the services of the T.M.Bhagalpur University Press, Bhagalpur till 31.05.2020 (the due date of petitioner's retirement on the basis of age of retirement being 62 years), followed with the payment of all its consequential benefits including the payment of all due terminal benefits.

(iii) To hold and declare that in view of order dated 18.12.2014 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 11527 of 2012 (State of Punjab & Others V/s Rafiq Masih) (Reported in), the Respondent University cannot make recovery of the amount of salary so paid to the petitioner; in lieu of the duty discharged by him in between 31.08.2018 to 04.05.2020.

(iv) For grant of any other relief or



relief(s) to which the petitioner may be found entitled to in the facts and circumstances of this case.”

3. Learned counsel appearing on behalf of petitioner submitted that Article 14(2) of the statute namely “General Conditions of Service of Employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila & K.S.D. Sanskrit Universities” specifically provides that “Employees in the inferior service shall retire on attaining the age of 62 years”. This way the petitioner, whose date of birth is 04.05.1958, will retire on attaining the age of 62 years, i.e. on 04.05.2020 or say 31.05.2020. By the order impugned, as contained in the Office Order No.89 of 2020 dated 04.05.2020, the petitioner has been made to retire with retrospective effect i.e. from 01.09.2018, which is in the teeth of the said statutory provisions.

4. *Per contra*, learned counsel appearing on behalf of respondents submitted that the University had issued an Office Order No. 26 of 2007 vide Memo bearing No. B/41301-41421 dated 17.01.2007, whereby the employees of the University were asked to get retire, who have completed 44 years of service or 62 years of age (whichever is earlier). In consonance with the aforesaid Office Order various employees of respondent University, who had completed 44 years of their service, were



made to retire.

5. Learned counsel further submitted that any citizen cannot be allowed to plead that he entered into service when he was of 16 years and he is entitle to remain in service till he attains the age of 62 years on the basis of a void appointment at an adolescent age. He submitted that in C.W.J.C. No. 11890 of 2005 ***Ganesh Sinha Vs. the BRA University, Muzaffarpur***, this Court held that the impugned order superannuating the petitioner on completing 44 years of service in College with effect from 18th of August 2004, cannot be interfered and the said decision of University does not suffer from any infirmity factual or legal. The relevant abstract of order dated 22.04.2009 passed in C.W.J.C. No. 11890 of 2005 is reproduced herein as follows:-

"If case of the petitioner is examined in the light of aforesaid law laid down by the Full Bench of this court, Section 67 of the Act will be of no avail. It is true that under section 67 of the Act, there is a provision that the date of retirement of a non teaching employee who is in the service of the University prior to the commencement of the Act shall be the date on which he would attain the age of 62 years. The question still would be as to what would be the basis for the petitioner to contend that as a non teaching employee when he had entered in service of the College in the year 1957 he was aged about 13 years and yet got employed in the College. There being no proof of this fact from any records and the service book produced and relief by the petitioner being of the year 1997, this Court would find it very difficult to accept the submission of the



petitioner that his date of birth should be accepted as 10.02.1944 for being continued in service till attaining of his age of 62 years i.e. up to February 2006.

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."

6. Learned counsel also submitted that, as far as, point of recovery of amount of salary paid for the period from 31.08.2018 to 04.05.2020 is concerned, no recovery shall be made, rather, it shall be adjusted in the pension to be paid to the petitioner, as in any manner the petitioner cannot be allowed to enjoy the amount of salary paid to him, for the said period on account of his valid retirement on 31.08.2018, which will be violative of pension rules. In above background learned counsel submitted that there is no infirmity in the impugned order, and hence the present writ petition is devoid of any merit and fit to be dismissed. The order has been passed in view of the orders of the Government who is funding authority of the Universities.

7. Heard the parties.

8. The fact that an employee may have been a minor at the time of his initial appointment, is insignificant in the



absence of any law at the time of his appointment, prohibiting appointment of 16 year old minors. An employer, who knowingly appoints minors with impunity, with its eyes open, cannot evade its obligations under the contract of employment, and that too after the employee has rendered service after attaining majority.

9. The Statute governing the General Conditions of Service of the Universities in respect of age of retirement of non-teaching employee is 62 years is provided in Section 67 of the Bihar State University Act, 1976 and the same is reproduced hereinafter:

“67. (a) Provided that the date of retirement of such non-teaching employee, who is in the service of the University prior to the commencement of the Bihar State Universities Act, 1976 (Bihar Act 23, 1976) shall be the date on which he attains the age of Sixty two years”

10. The Relevant provisions of Article 14 of the Statute governing the General Conditions of Service of the Universities in Bihar framed by the Hon'ble Chancellor of Universities on 20.09.1980 vide Letter No.BSU 36/80-5270 GS (1) dated 16.11.1980 is reproduced hereinafter:

“14. (1) All employees of the University other than inferior servants shall retire as per provisions of the Act.

(2) Employees in the inferior service shall retire on attaining the age of 62 years.

(3) A University employee whose date of retirement falls on the first day of a month will retire from service with effect



from the afternoon of the last day of the preceding month and if the date of retirement falls on any other date of the month he will retire in the afternoon of the last date of that month.”

11. 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, which is reproduced hereinafter:

“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.”

12. 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 judgment 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...”

13. The petitioner was appointed on 01.05.1974 on the post of *Daftari* - Helper in the pay scale of Rs. 85-2-94-EB-2-110 vide Office Order No. 7/74 dated 01.05.1974 (Annexure-2). The petitioner continued in service with all due benefits. The petitioner is aggrieved by the action of the Registrar of the



University, who vide order dated 04.05.2020 rendered the petitioner to retire with the retrospective date i.e. 31.08.2018 and he further directed that the paid salary for the period between 01.09.2018 till 04.05.2020 shall be recovered. As per the service record the date of birth of the petitioner is 04.05.1958, thus in the facts of the case, the petitioner attained the age of 18 years on 04.05.1976 and the petitioner in no manner can be made to retire on the basis of 44 years of his service. In similar facts of the case this Court *vide* order dated 07.08.2023 passed in CWJC No.10651 of 2022, relying on the order passed by the Apex Court in ***Gopal Prasad (supra)*** has allowed the petitioner of the said case to retire at the age of superannuation.

14. Article 141 speaks declaration of law by the Apex Court. The doctrine of precedence that Court is being bound by the previous decision is limited to the decision itself and as to what is necessary involved in it. A Court is not bound by an earlier decision if the decision becomes inconsistent with the law laid down by the Apex Court. A law declared by the Apex Court as is contemplated by Article 141 shall be binding to all the Courts within the territory of India. However, I restrain



myself to comment on the judgment of the Full Bench, in view of the fact that the issue can only be decided by the Larger Bench in an appropriate case to clarify the issue in view of the judgment passed by the Apex Court in case of ***Gopal Prasad v. Bihar School Examination Board & Ors.*** reported in (2020) 18 SCC 255.

15. Considering the fact that the communication made through the Letter No.1961 dated 12.11.1999 (Annexure A to the counter affidavit filed on behalf of the Respondents no.1 to 5) to the Vice Chancellor of the Universities of the State, has not been interfered by the Full Bench passed in case of ***Ganesh Sinha (Supra)*** and the University having adopted the provisions of the Bihar Pension Rules, 1950 the said Letter No.1961 dated 12.11.1999 is inconsistent with the recent judgment of the Apex Court in case of ***Gopal Prasad (Supra)***, cannot sustain and as such the same is hereby set-aside and quashed. Accordingly, the office order number 89/2020 dated 04.05.2020 is also set-aside and quashed.

16. Considering the minimum period of pensionable service and the age of the petitioner from 18 years till the date of his retirement on attaining 62 years, the only



alternative left to the University is to grant all the due benefits to the petitioner treating him to have retired on 31.05.2020. The Respondent University is directed to fix the pension/commutation of pension of petitioner, as applicable on the basis of available records, in accordance with law referred hereinbefore and issue authority letter within a period of six weeks from the date of communication of this order. The respondents are also directed to return the amount recovered and restrain from further recovery from his pension and sanction any other consequential benefits if required to be released.

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

18. There shall be no order as to cost.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.07.2025
Transmission Date	NA

