

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3803 of 2013

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Sudhir Kumar Jha, S/O Late Vindhya Nath Jha R/O Station Road, P.O.,
P.S. and Distt-Madhepura At Present Residing At 103, Pushp Bharti
Apartments, Sardar Patel Path, North S.K.Puri, P.S.-Krishnapuri, Distt-
Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Lalit Narayan Mishra Institute Of Economic Development And Social
Change, Bailey Road, Patna
3. The Registrar, Narayan Mishra Institute Of Economic Development And
Social Change, Bailey Road, Patna
4. The Joint Secretary To The Government , Department Of Higher
Education, Government Of Bihar, Patna

... .. Respondent/s

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*Service Law---Bihar Private Educational Institution (Taking
Over) Act, 1987---Section 6(2), (3),(4), 11(1)---Lalit Narayan Mishra
Economic Development and Social Change Institute (Service
Conditions) Rules, 2004--Rule 8-- Lalit Narayan Mishra Economic
Development and Social Change Institute (Service Condition) Rules,
2017---Section 10--Age of superannuation-- Petitioner, a
teacher/Lecturer of the Lalit Narayan Mishra Institute of Economic
Development and Social Change, Patna (“Institute”) filed the present
writ application for enhancement of the age of superannuation from 60
years to 65 years as per decision/resolution of the Institute, dated
22.09.2012, by which the age of superannuation of the teachers of the
institute has been fixed at 65 years---argument on behalf of State that
petitioner attained the age of superannuation at 60 years on 31.03.2013
and in that view, no relief can be granted to the petitioner. A
comprehensive rule came into force in the year 2017, therefore, the
petitioner cannot avail the benefit of 2017 Rules.*

Held: The petitioner, before attaining the age of 60 years, on 31.03.2013, filed the present writ application for fixing the date of superannuation of the petitioner at 65 years as per the decision of the Governing Body/Managing Committee of the Institute, dated 22.09.2012--- This Court, vide order, dated 20.03.2013, granted interim protection to the petitioner and directed the Institute regarding the continuity of the services of the petitioner and he continued to discharge his duties in the Institute after 31.03.2013--- In the year 2017, when the 2017 Rules came into force, the petitioner was already working in the Institute as a teacher by virtue of the interim order passed by this Court--- similarly situated teachers, who were absorbed in the services of the Institute, along with the petitioner, have been given the benefit of enhancement of age of superannuation at 65 years---Petitioner cannot be denied the benefit of Rule 10 of the 2017 Rules on the ground that he attained the age of retirement on 31.03.2013, after completing 60 years of service--- respondent authorities directed to reckon the age of superannuation of the petitioner at 65 years and to pay all consequential and monetary benefits---Writ application allowed. (Paras 27, 35, 38, 39)

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1. The State Of Bihar
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4. The Joint Secretary To The Government , Department Of Higher Education, Government Of Bihar, Patna

... .. Respondent/s

Appearance :

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For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Adv. Mr. Manoj Kumar Jha Ms. Suchi Bharti
For the State	:	Mr. Satya Vrat, AC to GP 10 Mr. Anwar Karim, AC to GP 10
For respondents 2-3	:	Mr. R. K. Shukla Mr. Pratyush Pratap Singh Mr. Ritu Raj Shukla

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 24-04-2024

The petitioner, who was working in the Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna (in short, 'the Institute'), as teacher/Lecturer, has filed the



present writ application for enhancement of the age of superannuation from 60 years to 65 years.

2. The relief, sought for by the petitioner, is to direct the respondents to implement the decision/resolution of the Institute, dated 22.09.2012, by which the age of superannuation of the teachers of the institute has been fixed at 65 years.

3. The Institute was set up as a private educational institution, which was taken over by the State Government, by virtue of Act 11 of 1987, namely, Bihar Private Educational Institution (Taking Over) Act, 1987 (hereinafter referred to as the '1987 Act').

4. As per Section 6 of the 1987 Act, from the date of the notification, all the staff employed in the Institution shall cease to be the employee of the institution, provided that they shall continue to serve the institution on an ad hoc basis till a decision under sub-sections (3) and (4) is taken by the State Government. Sub-Clause (2) of Section 6 of the 1987 Act says that the State Government will set up one or more committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether appointment, promotion or confirmation was made in accordance with the University Regulation or Government direction/circular and take



into consideration all other relevant materials, such as qualification, experience, research degree, etc., and submit its report to the State Government. Sub-Clause (3) of Section 6 of the 1987 Act says that the State Government on receipt of the report of the Committee or Committees, as the case may be, will decide in respect of each member of teaching staff on the merits of each case, whether to absorb him in Government service or whether to terminate his service or to allow him to continue on an ad hoc basis for a fixed term or on contract and shall, where necessary, redetermine the rank, pay, allowance and other conditions of service.

5. The Education Department, Government of Bihar, issued letter no. 1099, dated 11.08.1986, under the signature of the Joint Secretary of the Government addressed to the Administrator of the Institute, stating therein that the Institute has been taken over by the State Government on 19.04.1986 and the Government has decided that the teaching and non-teaching staffs of the Institute, from the date of taking over of the Institute, should be given the same scale, dearness allowance and other facilities at par with the teaching and non-teaching staffs working in different Universities.



6. The services of the petitioner, along with other similarly situated teachers, namely, Dr. Shivdeo Singh and others, were absorbed in the services of the Institute with effect from 18.04.1986 as per Section 6 (3) of the 1987 Act, vide notification, dated 03.05.2006.

7. The petitioner filed the present writ application in the year 2013 before attaining the age of 60 years, which, according to the respondents, was the age of retirement fixed earlier for the Institute.

8. This Court, vide order, dated 20.03.2013, while directing the respondents to file counter affidavit, granted interim order in favour of the petitioner by saying that if the Institute is not a Government Institution and it is like any other teaching Institutions under the Universities Act, the petitioner would be entitled to continuity of service.

9. The petitioner was attaining the age of 60 years on 31.03.2013. However, by virtue of the interim order, the petitioner continued to discharge his duties as teacher till he attained the age of 65 years in the year 2018.

10. The stand of the Institute is that by virtue of the Court's order, the petitioner continued to work, but as a "Guest Faculty" between the period 2013 and 2018.



11. The Managing Committee of the Institute, in its meeting, dated 08.07.2006, resolved to extend the age of retirement of teaching and non-teaching staffs from 58 years to 60 years and the Institute issued office order, dated 04.08.2006, under memo no. 634, indicating therein that the age of retirement has been increased from 58 years to 60 years.

12. The Human Resources Development Department, Government of Bihar, came out with a resolution, vide letter no. 2925, dated 07.12.2011, addressed to the Registrars of the Universities of Bihar, informing and intimating them that the State Government has decided to increase the date of superannuation of the Universities teachers from 62 years to 65 years with effect from 30.06.2010.

13. In the light of the aforesaid resolution, the Governing Body/Managing Committee of the Institute, in its meeting held on 22.09.2012, accepted the agenda no. 10, which was regarding enhancement of age of superannuation of teachers of the Institute from 60 years to 65 years and further recommended for amendment in Rule 8 of the Lalit Narayan Mishra Economic Development and Social Change Institute (Service Conditions) Rules, 2004 (in short, 'the 2004 Rules').



14. The State Government, in the Science and Technology Department, has also resolved to accept the age of retirement from 62 years to 65 years of the teachers of the Engineering Colleges as well as Polytechnic Colleges, as per the AICTE norms and the same has been notified by the State Government, vide memo no. 2131, dated 14.09.2012.

15. Some of the similarly situated teachers, namely, Dr. Shivdeo Singh and others, filed CWJC No. 3473 of 2015 before this Court for fixing the date of retirement at 65 years. The writ petitioners of CWJC No. 3473 of 2015 were absorbed as teachers in the Institute along with the petitioner, vide notification, dated 03.05.2006. The writ petition was disposed by this Court, vide order, dated 25.06.2015, with a direction to the Principal Secretary, Education Department, Government of Bihar, to consider the right and claim of the writ petitioners.

16. The Principal Secretary considered the claim of Dr. Shivdeo Singh and others and vide order, dated 14.03.2018, decided to fix the age of retirement of those teachers at 65 years as per Lalit Narayan Mishra Economic Development and Social Change Institute (Service Condition) Rules, 2017 (in short, 'the 2017 Rules').



17. It is relevant to point out that as per Section 11 (1) of the 1987 Act, 2017 Rules has been framed with effect from 28th June, 2017, and as per Section 10 of the 2017 Rules, for the teaching posts the criterion determined by the University Grants Commission will be followed by the Institute, in accordance with the order of the State Government.

18. It is not in dispute that the State Government, as per the norms of the University Grants Commission, has fixed the age of superannuation of the teaching employees of the Universities at 65 years with effect from 30.06.2010.

19. Learned Senior Counsel for the petitioner argued that after taking over of the Institute, all the employees of the Institute shall cease to be the employees of the Institution, but shall continue to serve the Institute on an ad hoc basis till a decision under sub-sections (3) and (4) of Section 6 is taken by the State Government for absorption of the employee in the Government service. The petitioner along with eight other similarly situated teachers were absorbed by the State Government, vide notification, dated 03.05.2006.

20. While taking over the Institute by virtue of the 1987 Act, the Education Department, Government of Bihar, vide letter no. 1099, dated 11.08.1986, directed the Administrator of the



Institute to ensure the same pay scale, dearness allowance and other facilities at par with the teaching and non-teaching staffs working in other Universities of Bihar.

21. After taking over of the Institute, it is the Managing Committee, which takes a decision with regard to the affairs of the Institute, including the service conditions of the teaching and non-teaching staffs. Therefore, the decision of the Managing Committee of the Institute enhancing the age of superannuation from 60 years to 65 years shall be deemed to have taken place from the date of decision, i.e. 22.09.2012. Earlier, the meeting of the Governing Body of the Institute was held on 08.07.2006 and the age of superannuation of the employees working in the Institute was enhanced from 58 years to 60 years.

22. During the pendency of the present writ application, five similarly situated teachers of the Institute, namely, Dr. Shivdeo Singh and others, filed CWJC No. 3473 of 2015 before this Court with preliminary relief to fix the age of superannuation at 65 years at par with other teachers working as per the norms laid down by the AICTE/UGC. Pursuant to the order passed in CWJC No. 3473 of 2015, the Education Department, vide order, dated 14.03.2018, increased the age of superannuation of those teachers to 65 years.



23. Vide memo no. 779, dated 28.06.2017, the Education Department, Government of Bihar, in exercise of power under Section 11 (1) of the 1987 Act, notified 2017 Rules and as per Section 10 of the 2017 Rules, the age of superannuation of the teaching employees of the Institute has been determined as per the age prescribed by the University Grants Commission norms.

24. When the petitioner, on 26.03.2013, submitted an application for allowing him to continue on his post on the basis of the interim order, dated 20.03.2013 passed by this Court, the petitioner was allowed to engage classes and perform all duties, including Placement and Student Cell Head without any restriction and interference. The petitioner was required to stay in the premises of the Institute after and before the class hours to perform other duties, including the duties of Placement and Student Cell Head till 22.02.2018. The petitioner was not working as a Guest Faculty and the members of Guest Faculty are not required to stay in the Institute premises except class hours and thereafter they are required to leave the Institute. The Institute never informed the petitioner that he was being considered as a guest faculty. The petitioner was allotted office in the premises of the Institute. On 22.02.2018, the petitioner left for Mumbai regarding treatment of his son, where his son unfortunately died on 05.04.2018. During



the absence of the petitioner in relation to treatment of his son, the office of the petitioner in the Institute, along with all the documents, was vacated without any notice to the petitioner and without preparing any inventory. All the documents kept in the office was taken out by the Institute, due to which the petitioner could not submit no dues certificate.

25. Per contra, learned Counsel for the Institute argued that the decision taken by the Governing Body/Managing Committee of the Institute in its meeting, dated 22.09.2012, regarding enhancement of age of superannuation of the teachers of the Institute from 60 to 65 years could not be implemented inasmuch as the State Government is the final authority to take a decision in this regard and to make further amendment in the Rules.

26. In pursuance to the order passed in CWJC No. 3473 of 2015, an order, dated 14.03.2018, was passed by the Principal Secretary, Education Department, Government of Bihar, whereby the age of retirement of the petitioners, i.e. Dr. Shivdeo Singh and two others were enhanced to 65 years. Since the petitioner had retired on 31.03.2013, much before the order, dated 14.03.2018 and before enactment of the 2017 Rules, therefore, the benefit of enhancement of age of retirement from 60 years to 65 years cannot



be given to the petitioner. The contention of the petitioner that he was working in the Institute post-retirement after 31.03.2013 is not tenable on the ground that he was working as guest faculty and not as permanent faculty.

27. On the other hand, learned Counsel for the State argued that the petitioner attained the age of superannuation at 60 years on 31.03.2013 and in that view, no relief can be granted to the petitioner. A comprehensive rule came into force in the year 2017, therefore, the petitioner cannot avail the benefit of 2017 Rules.

28. After hearing the rival submissions advanced on behalf of the parties, the only point, which requires determination in the present writ application, is as to whether the petitioner is entitled to the benefit of enhancement in age of his retirement to 65 years.

29. The petitioner was absorbed in the services of the Institute after screening pursuant to the 1987 Act along with eight other teaching employees, vide notification, dated 03.05.2006.

30. As per Rule 8 of the 2004 Rules, initially the age of retirement of the teachers was fixed at 58 years. In the meeting of the Governing Body/Managing Committee of the Institute, held on



08.07.2006, the age of retirement of teaching and non-teaching staffs of the Institute was enhanced from 58 years to 60 years.

31. The letter of the Joint Secretary of the Government addressed to the Administrator of the Institute, dated 11.08.1986, clearly mentions that the Government has decided that the teaching and non-teaching staffs of the Institute, from the date of taking over of the Institute, should be given the same scale, dearness allowance and other facilities at par with the teaching and non-teaching staffs working in different Universities.

32. The Human Resources Development Department, Government of Bihar, on 07.12.2011, took a decision to enhance the date of superannuation of the Universities teachers from 62 years to 65 years with effect from 30.06.2010.

33. The Governing Body/Managing Committee of the Institute, in its meeting held on 22.09.2012, under agenda no. 10, took a decision to enhance the age of superannuation of teachers of the Institute from 60 years to 65 years and further recommended for amendment in Rule 8 of the 2004 Rules. The necessary amendment, in Rule 8 of the 2004 Rules, was to be done by the State Government in exercise of the power conferred upon it under Section 11 (1) of the 1987 Act.



34. The age of superannuation of the teachers and other employees of the Institute was enhanced from 58 years to 60 years by the State Government in contemplation of amendment in the Rules. The State and/or the Institute is not disputing the age of retirement of the teachers at 60 years and rather, accepting the same.

35. The petitioner, before attaining the age of 60 years, on 31.03.2013, filed the present writ application for fixing the date of superannuation of the petitioner at 65 years as per the decision of the Governing Body/Managing Committee of the Institute, dated 22.09.2012. This Court, vide order, dated 20.03.2013, granted interim protection to the petitioner and directed the Institute regarding the continuity of the services of the petitioner and it has been admitted by learned Counsel appearing on behalf of the Institute that by virtue of the Court's order, the petitioner continued to discharge his duties, but as a guest faculty, meaning thereby, the petitioner was not removed after attaining the age of 60 years as on 31.03.2013 and he continued to discharge his duties in the Institute after 31.03.2013, till he left for the treatment of his son on 22.02.2018. The petitioner was to attain the age of 65 years on 31.03.2018.



36. This Court, while directing the continuity of the service of the petitioner, never directed that the petitioner shall be allowed to continue in the Institute as a guest faculty and the respondent authorities never challenged the interim order, dated 20.03.2013 passed by this Court and, rather, in compliance of the same, the petitioner was allowed to continue in the Institute on the teaching post. Therefore, the contention of the respondent authorities that the petitioner was working as a guest faculty in the Institute is not acceptable at all.

37. Some of the similarly situated teachers, during the pendency of this writ application, approached this Court by filing CWJC No. 3473 of 2015, seeking similar relief for enhancement of age of superannuation to 65 years and a co-ordinate Bench of this Court, vide its order, dated 25.06.2015, directed the Principal Secretary, Education Department, Government of Bihar, to consider their cases for enhancement of their age of retirement. The Principal Secretary, Education Department, Government of Bihar, took a decision to enhance the age of superannuation of similarly situated teachers, who were absorbed along with the petitioner from 60 years to 65 years on the basis of a comprehensive rule framed by the State Government in exercise of power under Section 11 (1) of the 1987 Act in the year 2017,



notified on 10th July, 2017. As per Section 10 of the 2017 Rules, for the retirement age of the teaching posts, the criterion determined by the University Grants Commission will be followed by the Institute, in accordance with the order of the State Government and the retirement age limit for the administrative officers and non-teaching employees of the Institute will be in conformity with the employees of the State Government.

38. In the year 2017, when the 2017 Rules came into force, the petitioner was already working in the Institute as a teacher by virtue of the interim order passed by this Court. Accordingly, in my opinion, the petitioner cannot be denied the benefit of Rule 10 of the 2017 Rules on the ground that he attained the age of retirement on 31.03.2013, after completing 60 years of service.

39. In the backdrop of the aforesaid discussion and taking into account the provisions of Rule 10 of the 2017 Rules, and the fact that similarly situated teachers, who were absorbed in the services of the Institute, along with the petitioner, have been given the benefit of enhancement of age of superannuation at 65 years, I direct the respondent authorities to reckon the age of superannuation of the petitioner at 65 years and to pay all



consequential and monetary benefits to the petitioner, treating his age of superannuation at 65 years as on 31.03.2018.

40. In the result, this application is allowed.

41. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	08-04-2024
Uploading Date	24-04-2024
Transmission Date	N/A

