
(2009) 08 PAT CK 0116
In the Patna High Court
Case No : CWJC No. 4577 of 2009

Bhupal Prasad Singh

APPELLANT

Vs

B.R.A. Bihar University and Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Bihar State Universities Act, 1976 — Section 67

Citation : (2009) 4 PLJR 260

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Siddharth Prasad, for the Appellant; Ajay Bihari Sinha for the Respondent-University, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioner and the counsel appearing for the University. Petitioner has filed this writ application for quashing the order dated 30.3.2009 issued by the Registrar, B.R.A. Bihar University on behalf of Vice-Chancellor of the University, informing the petitioner that he has been superannuated from service with effect from 31.7.2006 as has completed 44 years of his service on 31.7.2006. By the impugned order, a direction has also been issued for recovery of excess emoluments drawn by him beyond 31.7.2006.

2. Petitioner's case is that initially he was appointed in the Bihar University, Muzaffarpur on 1.4.1976 alongwith other permanent Grades-III & IV grade employees, his services were confirmed on 5.9.1980. Thereafter, he was transferred and posted as an Assistant in the P.G. Department of Chemistry. From P.G. Department, he was transferred to R.G.B.R. College, Maharajganj as an Assistant vide order of the Vice-Chancellor, dated 14.1.1981. Finally, by order dated 17.7.1982, he was transferred to L.S. College, Muzaffarpur on the post of Assistant and before issuance of the impugned order, he was working as an Assistant in L.S. College, Muzaffarpur.

3. Petitioner claims that his date of birth is 1.4.1954 as per his Matriculation Certificate, issued from Bihar School Examination Board in the year, 1971. It has also been stated that this very date of birth has been admitted and accepted by the University. Petitioner had earlier come before this court by filing C.W.J.C. No. 1836 of 1999 as despite Pay Fixation of the petitioner under the LD/UD merger scale w.e.f. 17.1.1979, he was not being allowed monetary benefits of the Pay Fixation. In the writ application also, he had given his date of birth as 1.1.1954 and it was not disputed by the University in the counter affidavit. The writ application was disposed of directing the Vice-Chancellor of the University to look into the grievance of the petitioner and to take a decision within a period of nine months. Pursuant to the direction of the High Court, the statement of the Pay Fixation of the petitioner was prepared by the University on 15.7.2002 in which also the date of appointment of the petitioner has been mentioned as 1.4.1976. The petitioner had to file Contempt Petition vide M.J.C. No. 2480/05 as direction of this court regarding Pay Fixation of the petitioner was not complied with. The University filed its show cause in the contempt matter. There also neither date of birth nor the date on which the petitioner entered into service was controverted by the University. When the petitioner was waiting for grant of benefits on account of Pay Fixation, letter dated 21.5.2008 was issued by the Registrar, B.R.A. Bihar University saying that excess amount has been paid to the petitioner more than his actual entitlement and the petitioner was directed to produce certain documents, failing which process of recovery was to be initiated against him.

4. Petitioner's case is that he produced all other documents except his appointment letter which according to him was destroyed in the devastating flood of the year, 2007. In support of this statement, an affidavit sworn by him in March, 2008 was produced and that has been annexed with the writ application as well. The University, thereafter, issued impugned letter dated 30.3.2009 informing that he has been superannuated w.e.f. 31.7.2006. The impugned letter has been issued on the ground that petitioner has completed 44 years of service in the year, 2006 and no one can remain in service for more than this period.

5. Counsel appearing for the University, however, has submitted that the statement made by the petitioner regarding his date of birth and his date of joining the service is incorrect. The petitioner has tried to mislead this court as well as earlier to University making false statement regarding his date of initial joining the service. This fact was revealed when in compliance of the order passed in the writ application regarding payment of petitioner's arrears of salary, the University was looking into the petitioner's service records. In order to ascertain petitioner's claim, the matter was referred to Government Audit Team deputed by the State Government and the Audit Team requisitioned relevant documents relating to petitioner's service. The Deputy Registrar, Registrar-II, Incharge of Establishment, reported that the documents relating to petitioner's initial appointment are not available in the University office, as such, cannot be produced before the Audit Team. Thereafter, the petitioner was directed to

produce the documents before the Registrar. In response to this, the petitioner met the registrar and submitted the photocopy of affidavit alongwith certain papers. The affidavit was regarding destruction of his initial appointment letter in the flood of 2007. Since the petitioner failed to submit his original appointment letter as Class-IV employee and his appointment letter as routine clerk as well as his service book in spite of several requisitions, as such, records at L.S. College, Muzaffarpur and Rajendra College, Chapra where the petitioner was initially appointed, were verified. On verification of service records of the petitioner, it was revealed that initially he was appointed as Class-IV employee at Rajendra College, Chapra. He was appointed as class-IV employee at Rajendra College, Chapra and gave his joining w.e.f. 12.7.1962. Rajendra College, Chapra became constituent unit of the then Bihar University on 1.1.1967 and after bifurcation, it fell under J.P. University, Chapra. Pay Fixation of the petitioner alongwith other non-teaching employee of Rajendra College, Chapra was approved by the State Government vide its letter No. 8804 dated 2.9.1971, in which date of, joining of the petitioner as Class-IV employee has been mentioned as 12.7.1962. The petitioner drew his monthly salary as Class-IV employee w.e.f. 12.7.1962 to 15.6.1971 from Rajendra College, Chapra. He filed a petition dated 15.6.1971 for payment of his last salary for the period 1.6.1971 to 15.6.1971 while transferred from Rajendra College, Chapra to Bihar University, Muzaffarpur. He was relieved from Rajendra College, Chapra on 15.6.1971 and joined Bihar University. Since then he continued in the service of Bihar University.

6. Considering the counter affidavit and submissions of counsel appearing for the University, it is apparent that the petitioner has filed a false affidavit stating that he joined as Class-IV employee in the Bihar University in the year, 1976. He has also tried to mislead by submitting an affidavit that his appointment letter has been destroyed in the flood of 2007. Documents annexed with the counter affidavit indicates that in the year, 1995 also, at the time of Pay Fixation, petitioner had taken the plea that his appointment letter has been misplaced. Petitioner's appointment/transfer at L.S. College, Muzaffarpur in 1976 could not be authenticated as original records were not available and found missing. The Principal, L.S. College, Muzaffarpur submitted a photocopy of acquittance roll in which it is entered that the petitioner was appointed as Routine Clerk by way of promotion vide Deputy Registrar (1), Bihar University Letter No. 5/13538-45 dated 15.5.1976 and he joined on the same day of 15.5.1976 in the morning. After entering as Class-IV employee at Rajendra College, Chapra w.e.f. 12.7.1962, he managed to appear at the Matriculation Examination in the month of April, 1971 in which he furnished a notional date of birth as on 1.1.1954 according to which, he would have superannuated on 31.12.2015, after rendering 56 years of his service.

7. Impugned letter has been issued in the light of letter No. 1961 dated 12.11.99 issued by the Secretary, Higher Education Department, Government of Bihar, Patna to all Principals of the Constituent Colleges and all Heads of University Department vide B.U. letter No. B/760 dated 13.4.2000 whereby an instruction

has been issued that the non-teaching employees who have already completed 44 years of service have to be superannuated from the University service. The minimum age for entry in the service, as per Government Circular is 18 years and maximum age limit for general category is 35 years, for OBC 37 years, for Extremely Backward Class 38 years and SC/ST 40 years. The age of superannuation of non-teaching employee of the University as per Section 67 of Bihar Universities Act is on attaining the age of 60 years. The Government Circular relating to non-teaching employees of the colleges-Universities regarding superannuation, on completion of 44 years of their service have been issued for the reason that in most of the cases, at the time of appointment on Class-IV posts, the employees do not produce any document in support of their age. The Government Circular relating to superannuation of non-teaching employees of colleges-University on completion of 44 years of service was challenged by an aggrieved employee, namely, Ganesh Sinha in C.W.J.C. No. 11890 of 2005 which has been decided against the writ petitioner. In that case, the date given in the Matriculation Certificate was not relied upon for the reason that the petitioner had passed Matriculation Examination while continuing in service of the college and the date of birth was given by the petitioner during continuation of service. It has been held in this decision that since the petitioner passed Matriculation Examination subsequently while continuing in service, as such, date of birth given in the Matriculation Certificate cannot be made basis for computing his age. When the service book is opened in the middle of career and qualification of Matriculation is also obtained during the service career. On the basis of own disclosure of employee regarding date of birth after entry in service, no weight can be attached to such documents.

8. In the case of the petitioner in C.W.J.C. No. 11890 of 2005, date of birth was furnished at the time of entry in service, on the basis of Matriculation Certificate and service book was opened, later on, after 40 years of his entry in service. In the present case, the petitioner has not admitted that he joined service in the year, 1962 and tried to mislead the University as well as this court by giving a wrong date of appointment in the year, 1976. The documents which have been mentioned in the counter affidavit specially the acquittance roll and the information supplied by the Rajendra College, Chapra where the petitioner was originally appointed, it is obvious that the petitioner joined his service in the year, 1962. 1976 is the year when the petitioner was appointed on promotion from Class-IV post to the post of Assistant. It is not his initial date of appointment. Since the petitioner joined his service in the year, 1962 and his date of birth is accepted as 1.1.1954, it means that he joined service at the 8 years of age. This cannot be accepted as on that date, he joined service, presumption will be that he must have been 18 years of age. Subsequently, in the year, 1971, he passed matriculation examination and there on his on disclosure, he gave his date of birth as 1.1.1954. No relevance can be attached to this date of birth, because it is a date of birth which was furnished by the petitioner in continuation of the service. As per the Government Circular, no non-

teaching employee in service of the college/university can remain in service for more than 44 years counting of 44 years of service in case of petitioner will start w.e.f. 1962, that is the date when he gave his joining in Class-IV post at Rajendra College. Chapra. The Circular which is challenged in the present writ application has already been held legal in C.W.J.C. No. 11890/05.

9. Considering all these facts and the discussion made in C.W.J.C. No. 11890/05 which is equally applicable in the case of petitioner, I do not find any merit in this case. This writ application is dismissed. However, the direction regarding recovery of emoluments cannot be upheld as the petitioner rightly or wrongly worked till the date on 30.3.2009 i.e. the date of issuance of impugned order. The petitioner would be entitled for payment of salary and allowance till 30.3.2009 admittedly he worked on the post in the college till that date.