

---

**(2013) 07 PAT CK 0010**  
**In the Patna High Court**  
**Case No : CWJC No. 12074 of 2013**

Krishna Kumar Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 31-07-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Contract Act, 1872 — Section 11  
Evidence Act, 1872 — Section 115, 67  
Majority Act, 1875 — Section 3

**Citation :** (2014) 1 PLJR 163

**Hon'ble Judges :** Mihir Kumar Jha, J

**Bench :** Single Bench

**Advocate :** Md. Shahnawaz Ali, for the Appellant; A.B. Sinha, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application is for quashing of an order contained in letter no. 1256/12/13 dated 9.11.2012, whereby and whereunder, the petitioner has been informed that he would superannuate with effect from 31.8.2013. The petitioner has also sought a consequential relief that the respondents should be directed to continue the petitioner in service till 31.1.2015 on the basis of his date of birth being 16.1.1953 as recorded in the matriculation certificate.

2. Learned counsel for the petitioner has submitted that the impugned order passed by the Principal of CM. College, Darbhanga (hereinafter to be referred to as "the College") is contrary to the provisions contained in Section 67 of the Bihar State Universities Act which lays down that the date of retirement of a non-teaching employee in the University service shall be on completion of 62 years of age. In this regard, he has submitted that the decision of the L.N. Mithila University being implemented in all the colleges as with regard to maximum tenure of service of a non-teaching employee of 44 years is to be made

applicable in case of such employees who do not possess the authentic proof of their date of birth but as the petitioner has passed the matriculation examination wherein his date of birth has been recorded as 16.1.1953, his date of retirement would be only 31.1.2015.

3. Per contra, learned counsel for the University has submitted that the decision of the State Government which has been followed by the University for giving a maximum tenure of 44 years of service to a non-teaching employee is based on a sound rationale that no one in any event can enter in the contract of service without being major. In other words, he has sought to explain that anyone who has taken advantage at the time of entry in service being lesser in age than 18 years will have to limit his service only up to completion of 44 years. He has submitted this decision has been uniformly applied in cases of non-teaching employees of all the Universities and no non-teaching employees in any University is being allowed to continue in service for a period over 44 years.

4. Before this Court would address to the aforementioned issue of age of retirement prescribed u/s 67 of the Bihar State Universities Act (hereinafter to be referred to as "the Act") and the decision of the State Government and University of giving maximum tenure of 44 years service to any non-teaching employee, it would be relevant to note herein that the petitioner had entered in service as a Class-4 employee in CM. College which was the established in the year 1938 and was the constituent unit of Bihar University prior to the constitution of Mithila University in 1976. In a Constituent College, no person should have been appointed in the University service without completing 18 years of age. The plea of the petitioner that he had entered in service on the basis of his matriculation certificate is also incorrect, inasmuch as, the matriculation certificate was issued to the petitioner only on 2.9.1969 (Annexure-1) whereas the petitioner himself has admitted that his date of joining in the college on a Class-4 post was 25.8.1969. Thus, when the petitioner has also not produced any other authentic document to show that his date of birth of 16.1.1953 as recorded in the matriculation certificate was the basis of his entry in service, he cannot claim the benefit of date of birth as recorded in the matriculation certificate issued after his appointment. In fact, the petitioner has also not produced the copy of the service book which was opened on the date of his appointment as a Class-4 employee in the college wherein his date of birth was recorded as 16.1.1953.

5. This aspect of entering in service while being a minor and its effect on the date of retirement also stands settled in the Division Bench judgment of this Court in the case of Baidyanath Prasad Sinha vs. The State of Bihar & Ors. reported in 1983 Lab & Ind Cas 162.

6. As a matter of fact, the maximum length of service of 40 years was introduced initially by the State Government by a circular issued in the year 1998 treating the age of entry of 18 years and continuation up to the age of 58 years which at that point of time was the date of retirement of a Government employee.

Subsequently, the State Government had made it applicable to the University employee by providing maximum length of 44 years of service treating the age of entry at 18 years and the retirement on completion of the age of 62 years.

7. This Court had considered this very decision of the University of the maximum service of 44 years vis-à-vis the age of retirement of 62 years and Section 67 of the Bihar State Universities Act in the case of Ganesh Sinha Vs. The B.R.A. Bihar University, Muzaffarpur, . disposed of on 22.4.2009 wherein following the judgment of the Full Bench of this Court in the case of Ragiawa Narayan Mishra Vs. Chief Executive Officer, Bihar Rajya Khadi Gramoudyog Board and Others, 0 it had held that the decision of the University to retire its non-teaching employees on completion of 44 years of service did not suffer from any error. It has to be noted that the Full Bench in the case of Ragiawa Narayan Mishra (supra) had considered the aspect in a very graphic manner while holding that a person's entry in service while being minor would be ineligible for appointment. This Court in the case of Ganesh Sinha (supra) had followed the statement of law laid down in the aforesaid Full Bench judgment which in fact would also cover the case of the petitioner:--

Such problems in fact have been faced by almost all the organizations, in this State, the Universities being no exception. The State Government in order meet such situation had issued Circular with regard to maximum length of service by treating the minimum age of employee to be 18 years on the date of appointment. When such decision of the State Government was as-sailed before this court a Full Bench of this Court in the case of Ragiawa Narayan Mishra (supra) had laid down the law in relation to a similar 1998 circular of State Government confining

the continuance of service of a Government servant for a period of 40 years, treating entry at the age of 18 years and continuance up to the age of 58 years.

8. In the backdrop of the law laid down by the Full Bench of this Court in the case of Ragiawa Narayan Mishra (supra) and Ganesh Sinha (supra) if the facts of the case of the petitioner is taken into consideration, it would become clear that when the petitioner had entered in service in the month of August, 1969, he had taken advantage of his own declaration of being a major i.e. 18 years as on 25.8.1969. The petitioner therefore cannot be heard to say that at the time of his appointment and/or joining on 25.8.1969, he had produced his matriculation certificate because the same was issued to the petitioner after his appointment and joining in the college i.e. on 2.9.1969. Thus, when the petitioner was aged about 16 years 7 months and 9 days on the date of his appointment on 25.8.1969 though he ought to have been at least 18 years of his age in order to become University servant, he had taken advantage of entering into service while he was ineligible for appointment in the University service. At no point of time, under the University service, a person could have entered in University service while being a minor. It is this aspect of the matter which has been settled by the judgment in the case of Baidyanath Prasad Sinha (supra) wherein it was held

that a person having obtained advantage by declaration of his higher age which was usually not available at the time of initial appointment, he could not claim further benefit of continuing in service on the basis of date of birth mentioned in the matriculation certificate which was not declared by him at the time of entry in service.

9. The petitioner thus is bound by his own conduct of entering into contract of service representing himself to be major as on 25.8.1969 and thus, he cannot be permitted to take a contrary plea of different date of birth. That precisely is the concept of estoppel by conduct u/s 115 of the Indian Evidence Act which lays down that:--

When one person has, by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative, shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

10. Considering all these aspects, this Court in the case of Ganesh Sinha (supra) having exactly same issue has held as follows:--

.....The following statement of law laid down in the Full Bench judgment in fact would also cover also the case of the petitioner:--

.....13. The plain perusal of the aforesaid statutory provision would, undoubtedly, go to suggest that the Government by virtue of an amendment by addition Rule 5 in Appendix-5 in the Bihar Pension Rules which came into effect, on 23.8.1950, long before the petitioners came to be admitted in the service of the Board and it is very clear there from that the qualifying age of the Government servants for consideration of the pensionary benefits came to be raised from 16 years to 18 in the Government service. Otherwise, also, the aforesaid circular of 1998 has a purpose and policy behind it. It is clarificatory. There is no dispute about the fact that the service between the employer and the employees is a matter of contract. Once, a person is validly entered into the service of the Government he is offered the contractual and statutory protection and the initial entry in the service always is the outcome of the contractual relationship. Who would be competent to contract? It has been provided in Section 11 of the Indian Contract Act, 1872, as to who is the competent to contract. Section 11 of the said Act reads herein as under:--

Who are competent to contract.- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

14. It is very clear and evident from the said provision that in, so far as, the competence for a valid contract in terms of the age is concerned, one has to attain the age of majority and majority obviously would be according to law. The

provision of Section 3 of the Majority Act, 1875, clearly provides as to what is the age of a person domiciled in India. It is in this context, it would be necessary and profitable to refer the provision of Section 3 of the Majority Act, 1875 which is reproduced as hereunder:--

### 3. Age of Majority of persons domiciled in India.-

(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

15. It leaves no any manner of doubt that in this country the age of majority of a person, domiciled in India, has been on his attaining the age of eighteen years and not before. Of course, it would be not very material at this stage to consider that in computing the age of a person, the day on which he borns is to be included as a whole day.

16. Be that as it may, one thing is certain that admittedly both the petitioners when they entered into the contract with the respondent Board they had not attained the age of majority. Apart from its legal impact and effect, the ramifications and end result of the status of a contract in terms of the service relationship, a person, could be said to have entered into a valid service, only, when he has attained the age of majority. So the minimum age prescribed at the entry point in the Government service has been 18 years. The maximum age prescribed for the exit point is 58 years. In other words, the total length of period of Government service in any case for pensionary benefits would not exceed 40 years. It is in this context, the Government Circular mentioned herein above needs to be considered. When there is a clear Rule provision anything contrary to or inconsistent with or incompatible to it, any circular or resolution or order, will not have any legal and valid effect to abridge the right enshrined in the Rule Provision. Even if the said circular of 1998 as relied upon by the petitioners is considered to be beneficial to them then, also, it cannot be read at this juncture with the existing statutory provision incorporated in the Bihar Pension Rules, as well as, the Bihar Service Code. Therefore, from that point of view also the petitioners cannot be allowed to contend that they have right to continue even beyond the age of 58 years though provided in Rule 73 of the Bihar Service Code which prescribes the superannuation age of 58 years.

17. Thirdly, it is settled and established proposition of law and principles of jurisprudence that a person who takes undue advantage by one or other reasons at the entry point in the service cannot be allowed to urge that he be given higher benefit and if it is urged then, clearly, it goes to show that something wrong or irregular has been done, at the entry point, in service. So the settled principle, also, creates a very strong impediment in getting the relief from this Court which is exercising extraordinary, prerogative, equitable and discretionary

writ jurisdiction by invocation of the provision of Article 226 of the Constitution of India.....

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.....

11. It is true that u/s 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 shall be the date on which he was attained the age of 62 years. The question, however, would still be as to what could be the date of entry of such non-teaching employee in the University service? Can it be less than 18 years? In the CM. College, Darbhanga, which is a constituent college and thus part of the University service, no minor could have been appointed in the University service. In this backdrop, the age of retirement of 62 years can be made applicable to only such non-teaching employees who had entered in service after being a major i.e. on completion of 18 years. The maximum length of 44 years service, therefore, would be available to such of the University servant who had entered in University service on or after attaining the age of 18 years. The petitioner, as indicated above, was aged about only 16 years and 7 months when he had joined on a Class-4 post in CM. College and, thus, he cannot seek protection of Section 67 of the Act. To that extent, the decision of the University and the college in not allowing the petitioner to continue in service beyond completion of 44 years of service does not suffer from any error especially when the same has been uniformly applied in the case of all non-teaching employees of the Mithila University and other universities.

12. This Court, therefore, following the ratio of the Full Bench judgment of this Court in the case of Ragiawa Narayan Mishra (supra) as also in the case of Ganesh Sinha (supra), must hold that the decision of the Principal of the College in the impugned order informing the petitioner that he would superannuate from service with effect from 31.8.2013 does not suffer from any error and as such, the impugned order superannuating the petitioner on completion of 44 years of service in college with effect from 31.8.2013 cannot be interfered with. In the result it has to be held that this application is devoid of any merit and is, accordingly, dismissed.