

**(2002) 12 PAT CK 0041**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 11410 of 2002**

Pamanand Jha

APPELLANT

Vs

Rajendra Agricultural University and Others

RESPONDENT

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**Date of Decision :** 05-12-2002

**Acts Referred:**

**Citation :** (2003) 4 PLJR 611

**Hon'ble Judges :** Chandramauli Kr. Prasad, J

**Bench :** Single Bench

**Advocate :** Anand K. Ojha and S.N.L. Das, for the Appellant; S.P. Thakur, for University, for the Respondent

**Final Decision :** Allowed

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## Judgement

Chandramauli Kr. Prasad, J.—(sic) (Annexure-6) whereby it has been directed that the Petitioner shall retire from service on 31.1.2001 on attaining the age of superannuation.

2. Shorn of unnecessary details, facts giving rise to the present application are that the Petitioner was appointed as Store Keeper by the State Government and joined as such at Agriculture Research Institute, Bihar" Agriculture College, Sabour, Bhagalpur. Later, on establishment of the Rajendra Agriculture University) under the Rajendra Agriculture University Act, 1971 Petitioner's service was transferred to the University. Petitioner opted to remain in the State Government services and filed such option within time. It was the grievance of the Petitioner that although his option to remain in the State Government service has not been accepted, still the Respondent-University, treating him to be the temporary State Government employee, had decided to retire him from service on" attaining the age of 58 years. Aggrieved by the same, Petitioner along with other similarly situated persons filed C.W.J.C. No. 6145 of 2000 Niranjana Jha and Ors. v. State of Bihar and Ors. before this Court and a learned single Judge of this Court by order dated 31.7.2000 disposed of the writ application in the following words:

In the facts and circumstances, I remit the matter to the Respondent "State and its authorities of Agriculture Department to determine the question relating (sic) rejected, the Respondents will give reason and will state as to what will be their status and age of their retirement. The writ application stands disposed of with the aforesaid observations/directions.

3. In view of the aforesaid direction of this Court, the case of the Petitioner was considered by the Agriculture Production Commissioner and by order dated 1.2.2001 (Annexure-7) it has been held that the Petitioner has become an employee of the University. Complaint of the Petitioner is that notwithstanding the aforesaid finding, the Respondent-University by the impugned order dated 13.2.2002 (Annexure-6) has decided to retire the Petitioner on attaining the age of 58 years with effect from 31.1.2001.

4. Mr. Ojha appearing on behalf of the Petitioner states that the Petitioner accepts the order dated 1.2.2001 (Annexure-7) passed by the Agriculture Production Commissioner and does not intend to challenge the same. He submits that the Petitioner having been held to be an employee of the Respondent-University, the decision of the Respondent-University to retire him at the age of 58 years, treating him a Government servant, is illegal. He points out that the age of superannuation of University employee is 60 years. He submits that the matter stands concluded by the judgment of this Court dated 28.1.2002 passed in C.W.J.C. 7836 of 2001. Kamalnath Jha and Another Vs. State of Bihar and Others, and my attention has been drawn to the following passage from the said judgment:

As a consequence of the Government decision the Petitioner will be deemed to continue in the employment of the -University. They no longer wish to challenge the Government decision. The result will be that they will continue as University employees. The University is accordingly directed to recall the orders retiring the two Petitioners from service on attaining the age of 58 years and to allow them to resume their duties. The Petitioners will be entitled to their full salary and other benefits, from their respective dates of retirement till the date they resume their duties. The Petitioners are held and declared to be employees of the University and their conditions of service, including the age of retirement and the settlement of their retiral benefits will be governed by the provisions of the Act, Rules and the Statutes governing the service conditions of the University employee.

5. No counter affidavit has been filed on behalf of the Respondent but at the time of hearing Dr. S.R Thakur has appeared on behalf of the University.

6. Having heard learned Counsel for the Petitioner and counsel for the Respondent-University, I am of the considered opinion that the matter is covered by the decision of this Court in the case of Kamalnath Jha (supra). Following the same, I am of the opinion that the order impugned retiring the Petitioner from service on attaining the age of 58 years with effect from 31.1.2001 cannot be

allowed to stand and the same is set aside.

7. In normal circumstances, I would have directed for payment of the entire salary which the Petitioner has been denied on account of the illegal order of retirement as in the other case, but I am not inclined to hand over the same direction in the present case for the reason that the order retiring the Petitioner with effect from 31.1.2001 on attaining the age of 58 years was passed as back as on 31.1.2001 and the Petitioner had chosen to file this writ application after a lapse of more than one and a half years on 7.10.2002. This delay in approaching this Court, disentitles him for the salary for the period in between.

8. However, the Petitioner shall be allowed to resume his duty without any delay and not later than two weeks from the date of receipt/production of a copy of this order. He shall be paid the salary from the date of his joining till the date of his retirement. Although he shall not be entitled for arrears of salary for the period 1.2.2001 till the date, he joins in pursuance of this order, but the said period shall be counted for other purposes.

9. Application stands allowed in the aforesaid terms.