

(2003) 04 PAT CK 0147
In the Patna High Court
Case No : L.P.A. No. 48 of 2003

Parmanand Jha

APPELLANT

Vs

Rajendra Agricultural University and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Citation : (2003) 4 PLJR 431

Hon'ble Judges : Rajendra Prasad, J; Nagendra Rai, J

Bench : Division Bench

Advocate : K.N. Choubey, for the Appellant; V.R.P. Singh, for University and Asfar Hasan, for State, for the Respondent

Final Decision : Allowed

Judgement

1. This application has been filed for substitution of heir and legal representative of deceased sole Appellant, who died on 16.3.2003 leaving behind his widow.
2. Having heard learned Counsel for the parties, the substitution petition is allowed.
3. Let the name of sole Appellant be expunged and in his place the name of his widow be substituted. She has already appeared through Vakalatnama.
4. Heard learned Counsel for the parties on merits of the appeal.
5. The Appellant is aggrieved by the part of the impugned order dated 5.12.2002 whereby the learned Single Judge while allowing the writ petition filed by the Petitioner challenging the order dated 13.2.2001 (Annexure 6 to the writ petition) whereby he has been directed by the authority to retire from service with effect from 31.1.2002 on attaining the age of superannuation, had ordered that he will not be entitled for arrears of salary for the period 1.2.2001 till the date of his joining in pursuance of the direction issued by him.
6. Shorn of all details, the essential facts for disposal of the present appeal are that the original Appellant was a government employee whose services were

transferred to Rajendra Agricultural University in terms of the statutory provision. He opted to remain in the State Government Service. That matter was not being decided by the concerned authority. Thereafter this Court directed the concerned authority, namely, Agricultural Production Commissioner to decide the matter, who by his order dated 1.2.2001 decided the matter and held the Appellant to be an employee of the University. An employee of the University is to retire at the age of 60 years whereas the employee of the State Government is to retire at the age of 58 years. By the impugned order, which was passed on 13.2.2001 the original Appellant was ordered to retire from service with effect from 31.1.2001 treating him as a Government Servant.

7. The learned Single Judge held that the original Appellant is to be treated as an employee of the University and as such his age of superannuation would be 60 years. However, as the original Appellant has challenged the aforesaid order on 7.10.2002 he will not be entitled for arrears of salary for the period 1.2.2001 till the date of his retirement. The original Appellant in terms of the direction passed by the learned Single Judge has superannuated after completion of 60 years of age i.e. 31st January, 2003 and thereafter he died, as stated above.

8. The only question for consideration in this appeal is as to whether the original Appellant can be denied arrears of salary only because of filing of writ petition after such a long time.

9. The admitted fact is that he has been treated as an employee of the University and thus he is entitled to salary till completion of service of 60 years. The decision of the authority to retire him at the age of 58 years was illegal in law. The Appellant cannot be allowed to suffer due to wrong and illegal order passed by the authority.

10. In our view the original Appellant is entitled to arrears of salary till completion of 60 years of age. Accordingly, the order of the learned Single Judge is modified to the extent that the Appellant is entitled for arrears of salary due to deceased Appellant from February, 2001 till the date of his attaining the age of 60 years. In the result, the appeal is allowed in part and the order of the learned Single Judge is modified to the extent as indicated above.