

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8225/2012

GOPAL PRASAD

...APPELLANT(S)

VERSUS

BIHAR SCHOOL EXAMINATION  
BOARD & ORS.

...RESPONDENT(S)

O R D E R

The appellant was appointed as a Calligraphist-cum-Assistant on 20.05.1970 at an age of 15 years, 6 months and 8 days. Learned counsel for the appellant states that this was a prevalent practice and many such appointments were made. The fact remains that on the respondents Board realizing the anomaly of employing a minor, took a policy decision for the benefit of such persons on 15.01.2004 putting a deeming fiction that the age of entry in service of those below 18 years would be treated as 18 years at the time of their appointment. If we may say, the endeavour was to regularize some irregularity which had occurred.

On 14.02.2004, the said policy decision was communicated.

The appellant was not troubled by any of these aspects and continued to work but it appears that on the anvil on his retirement acquired a thought process as to how he could be continued for a further period of time by taking advantage of the period he had served as minor and thus, an RTI was filed by his son on 16.02.2012, in response where to it was stated on 26.03.2012 that since the deeming provision was made available to the appellant for his benefit, and he was to be treated to be as 18 years of age, the total period for which he could work could be 60 years of age and thus, not more than 42 years of working employment.

We may note a divergence of judicial opinion between the Patna High Court and the Jharkhand High Court - the Full Bench had opined in *Ragjawa Narayan Mishra v. Bihar Rajya Khadi Gramoudyog Board* (2005) SCC Online Pat 978 that a person cannot continue beyond the age of completion of 40 years of service (as 58 years was the age of superannuation) while the Division Bench of the High Court of Jharkhand took a contrary view.

The Writ Petition filed by the appellant was dismissed, the Letter Patent Appeal received the same result and finally the matter came up to this Court. The aspect of divergence of views in a different sense continued to trouble this matter as on 28.05.2020, two Hon'ble Judges of this Court took a different view and elaborate judgments penned down separately reported as *Gopal Prasad v. Bihar School Examination Board and Others - (2020) 18 SCC 255*. This is how the matter has come up before us.

On the learned counsel appearing for the appellant having taken us through the facts of the case, we put to learned counsel as to what is that he seeks to gain from the present proceedings. Learned counsel fairly stated that what he expects is that the emoluments for a period of two and a half years which he would have earned if he had continued in service, and he was willing to continue in service, should be paid to him.

We are unequivocally of the view that the appellant cannot be granted such a benefit having not worked for that period *albeit* on account of the decision of the respondent. We must take note of the fact that the office orders were beneficial in

character for all persons such as the appellant whose services were sought to be regularized as the initial recruitment itself cannot be said to be proper, having been made below 18 years of age. On the office orders being issued in the year 2004 itself, the appellant knew that he was getting the benefit of that order and if the issue of the length of service troubled him, he never raised that at that stage.

We do believe that divergence of view is more of an academic exercise now as no case other than the one present before us has been pointed out to us and possibly would not survive even after such considerable lapse of time and the time period when such cases arose.

Thus, we are of the view that there is no need to answer the reference arising from divergence of opinion of two Hon'ble Judges. Learned counsel for the appellant did endeavour to persuade us to look into merits of the matter as he wanted the academic satisfaction of the conclusion being arrived by us. That luxury is really not available to us given the load of work.

We are thus, of the view that nothing really survives in this matter for us to delve further and the Civil Appeal accordingly stands disposed of.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[ABHAY S. OKA]

.....J.  
[VIKRAM NATH]

NEW DELHI,  
SEPTEMBER 14, 2022.

ITEM NO.101

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8225/2012

GOPAL PRASAD

Appellant(s)

VERSUS

BIHAR SCHOOL EXAM. BOARD &amp; ORS.

Respondent(s)

([ TO GO BEFORE THREE HON'BLE JUDGES ] )

Date : 14-09-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. Anand Shankar Jha, Adv.  
Mr. Arpit Gupta, Adv.  
Ms. Meenakshi G. Sharma, Adv.  
Mr. Girish Bhardwaj, Adv.  
Mr. Abhilekh Tiwari, Adv.  
Mr. Arjun Garg, AOR

For Respondent(s) Mr. Manish Kumar, Adv.  
Mr. Gopal Singh, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal stands disposed of in terms of the  
signed order.

Pending application, if any, stands disposed of.

[ASHA SUNDRIYAL]  
ASTT. REGISTRAR-cum-PS  
[SIGNED ORDER IS PLACED ON THE FILE]

[POONAM VAID]  
COURT MASTER (NSH)