

(2014) 02 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 2573 of 2014

Abhimanyu Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —
Section 3(1), 4

Citation : (2014) 4 PLJR 374

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Ashutosh Jha and Pravin Kumar, Advocate for the Appellant; Sheo Shankar Prasad, Advocate for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application reads as follows:--

"That the petitioner seeks indulgence of this Hon"ble High Court for the following reliefs:--

A(i) A writ in the nature of certiorari of any other appropriate writ, order, direction quashing the letter bearing No. 2421 dated 1.10.2007, passed by District Superintendent of Education, Bihar, Patna the respondent No. 3 addressed to the petitioner asking him to retire from service as a Headmaster, Middle School, Madhubani Ghat, East Champaran district, in the light of the office letter bearing No. 2440 dated 16.12.2005.

The letter No. 2440 dated 16.12.2005 by the Respondent No. 3 to all Area Education Officer, Block Education Extension Officer and Drawing & Disbursing Officer, holding that in view of the decision in C.W.J.C. No. 5637 dated 16.9.1999 and L.P.A. No. 1483 of 1999 dated 20.4.2000. The State Government to the effect that for appointment to the office of Teachers. The minimum age to the effect that for appointment to the office of Teachers. The minimum age is to be

treated to be 18 years on the date of appointment and to retire on the said basis and that no teachers would work for more than 42 years. With further direction that the teachers who have completed 60 years of age or 42 years of service whichever is earlier should be retire.

(b) A writ in the nature of mandamus for any other appropriate writ, order/s direction commanding the respondents for the following:--

(i) To treat the order is contained in Annexure and to be non-est and nullity.

(ii) To treat the petitioner's date of retirement of the petitioner to be 31.1.2009. When he is to attain the age of 60 years keeping in view his date of birth is 12.1.1949.

(iii) To give/release salary and all other benefits to which the petitioner is entitled to treating him to have retired on 31.1.2009.

(C) To any other relief/reliefs for which the petitioner is found entitled too.

(2) That the substantial points involved in the case are as under:--

(i) Whether the order under challenge are without jurisdiction?

(ii) Whether the order under challenge is sanctioned by any statutory provision and provisions which govern service conditions of Government service conditions of Government Elementary School Teachers?

(iii) Whether in view of the facts that on the date of which the petitioner joined the service there was no fixation of minimum age for appointment and the minimum age for appointment came into existence first in the year 1975 and not prior to then and thus the petitioner entitled to continue in service till attainment of 60 years of age irrespective of the years and the school teachers have put in.

(iv) Whether the order under challenge will result in arbitrary and discrimination?

(v) whether the order under challenge are arbitrary and mala fide?

(vi) Whether the impugned order is violative of Articles 14, 16, 21 and 300-A of the Constitution of India."

2. Mr. Ashutosh Jha, learned counsel appearing on behalf of the petitioner has submitted that the date of birth of the petitioner was 12.1.1949 and as such as per the Government decision dated 24.3.2005, he ought to have been superannuated only upon completion of 60 years on or after 12.1.2009 but the authorities have made the petitioner to superannuate w.e.f. 31.1.2007. Mr. Jha is therefore of the view that the aforementioned Government order dated 24.3.2005 could not have been overlooked in the case of the petitioner.

3. In this case a counter affidavit has been filed, wherein, it has been stated that the petitioner is a teacher of a taken over School which was earlier a private School. The petitioner had entered into service on 29.9.1965 while he was aged

about 16 years and 8 months only and therefore, in view of the judgment of the Division Bench dated 27.4.1994 in C.W.J.C. No. 7737 of 991 (Vivekanand Singh Suman and Others v. State and Ors.) confined only to the teachers of the taken over School, the age of superannuation of a teacher who had entered prior to 18 years of age had to be fixed after taking into account the period he had served while he was minor. To that extent, the respondents rely on an order of this Court dated 12.11.2013 passed in C.W.J.C. No. 6305 of 2012 (Sheo Nath Mahto v. The State of Bihar & Ors.) vide Annexure-A to the counter affidavit.

4. In the considered opinion of this Court, the issue is squarely covered by the aforementioned order of this Court in the case of Sheo Nath Mahto (supra), wherein, it was held as follows:--

"In the considered opinion of this Court, once there is no denial to the fact that the petitioner's appointment in the school, while the school was being run by the private management, was made on 1.5.1969 he on the basis of his date of birth as shown in the matriculation certificate would essentially be a minor on the date of his appointment inasmuch as his date of birth was 10.5.1952 and he had got appointed in the school on 1.5.1969 i.e. a few days short even in completing 17 years. In this way, the petitioner has actually served for a period of 42 years till May 2011 and, therefore, the District Programme Officer (Establishment) is perfectly justifying in computing the total length of service of the petitioner from the date he got initially appointed on the post of teacher in a private school, which was eventually taken over in terms of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976 (hereinafter referred to as "the Act") which came into force on 6.2.1976.

In fact, all the primary schools including the school of the petitioner were taken over only in terms of the Act and the cut-off date of 1.1.1971 was also envisaged under Section 3(1) of the Act. Section 4 thereof contains the provisions of consequences of taking over and has also clarified that every officer, teacher or other employee holding any office or post in the school taken over by the State Government shall be deemed to have become the Government employee, whose terms and conditions of service could be redetermined by the State Government.

It was in this background, series of writ petitions were filed before this Court when actions were taken against the teachers who were found to be minor on the date of appointment and/or on the date of taking over i.e. 1.1.1971. This Court in the aforesaid case of Vivekanand Singh Suman (supra) had approved the take over services of such teachers who were minor at the time of their appointment in the school and had made an observation to the following effect:--

"We may, however, observe that in these cases where the petitioner(s) is/are found to be minor(s) on the date of appointment/nationalization of the school, the said period may be subtracted from the date of their superannuation."

There is no dispute that the aforementioned judgment of the Division Bench has acquired finality and thus was capable of being acted upon by the District

Programme Officer (Establishment). Once this Court, therefore, reaches to the conclusion that the petitioner's appointment was made on 1.5.1969 which is fully supported from the entries made in the service book and not being controverted by the petitioner in any manner, there would be no difficulty in holding that the petitioner's retirement will be only with effect from 31.5.2011.

It is true that the petitioner, either due to over sight or otherwise, was allowed to continue till the impugned order was passed on 27.12.2011 and thus the petitioner will be fully entitled for payment of salary for the period 1.6.2011 to 27.12.2011. In fact, there is also no denial to this aspect in the counter affidavit that the petitioner had not worked till 27.12.2011. The letter of the Block Education Officer, in fact, as pointed out that the petitioner's transfer order was acted upon as far back as on 7.9.2011. In that view of the matter, since there is no dispute with regard to actual working of the petitioner till 27.12.2011. he will be entitled for payment of full salary for the period 1.6.2011 to 27.12.2011 despite the fact that the petitioner will be deemed to have superannuated with effect from 31.5.2011.

It is however clarified that the petitioner's entire retirement benefit including his length of service for calculation of retirement benefit will be only up to 31.5.2011.

If the petitioner's retirement benefit has not been paid on account of pendency of this writ application, the same must be done within a period of four months from the date of receipt of this order.

With the aforementioned observation and direction, this writ application is, accordingly, disposed of."

5. As noted above the issue regarding fixation of age of retirement of an employee who was earlier working under the private management and was directly before the Division Bench of this Court and the Division Bench had clarified that though such persons even if they were minor at the time of their appointment in the private college would be entitled to take over of their services but then the period of service that they had rendered while they were minor at the time of their appointment will be subtracted from the date of their superannuation. This decision has been consistently followed by the respondents in giving effect to the date of superannuation and no explanation can be said to be made in the case of the petitioner so far the validity of Annexure-5 would apply to all Government servants who as such the petitioner is a class in himself, on account of his services being taken over in terms of Section 3 and 4 of the Take Over Act 1976, he cannot have the luxury of getting the benefit of Government decision which in effect is only with regard to extension of the age of retirement of Government Servant from 58 years to 60 years.

6. Be that as it may, this Court on account of admitted position that the petitioner had entered in service on 29.9.1965 and had definitely served institution for a period of nearly 42 years, which period is the maximum period admissible to any Government servant by way of qualifying service under Bihar

Pension Rules would find no error in superannuating the petitioner w.e.f. 31.1.2007. As a matter of fact the petitioner had happily retired on 31.1.2007 and therefore, now after a period of 7 years of his retirement, this Court even otherwise is not inclined to go into the fixation of the age of retirement. It is, accordingly, dismissed.