
(2007) 04 PAT CK 0167
In the Patna High Court
Case No : CWJC No. 1241 of 2006

Akhilesh Kr. Srivastava

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Citation : (2007) PLJR 386

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : B.K. Dubey and G.K. Jha, J.P. Shukla and A.N. Rai, for the Appellant;
Shalivi Raut, A.K. Sharma and S.K. Jha, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—In all these writ applications the basic relief which the petitioners has sought is to quash the orders by which they were made to superannuate from service from respondent Corporation on reaching the age of 58 years without giving them the benefit of enhanced age of retirement to 60 years. They have sought implementation of the amended Rule 73 of the Bihar Service Code for the employees working under Bihar State Food and Supply Corporation. The petitioners have also sought quashing of the office order No. 506 dated 29.7.2006 by virtue of which the age of retirement for the employees of the Corporation has been extended up to 60 years but from the date of issuance of the order i.e. 29.7.2006. One thing which must be recorded at the outset is that similar issue was raised by some other petitioners before this Court in the case of Kameshwar Mahto vs. The State of Bihar & Ors. Reported in 2005(4) PLJR 498 i.e. C.W.J.C. No. 8579 of 2005 and C.W.J.C. No. 6861 of 2005. These writ applications were heard by a Hon'ble Single Judge and vide order dated 5.8.2005 the learned Single Judge dismissed the writ applications holding that no direction can be issued upon the respondents Corporation to enhance the age of retirement of its employees to 60 years, since there is no automatic application of amended Rule 73 of the Bihar Service Code. This order however

was rendered in the light of an order issued by the Chief of Administration dated 9.7.2005 which was supposed to be a decision of the Board of Directors by virtue of which the request for enhancing the age of superannuation of its employees was turned down.

2. Subsequently vide order dated 29.7.2006 the Board of Directors of the Corporation considered the issue of enhancing the age of retirement of its employees and decided to increase it to 60 years but then the order as already noticed above was made applicable from the day of its issue. This subsequent order issued by the Corporation created an anomalous situation because between the order issued on 9.7.2005 rejecting enhancement of age and the subsequent order dated 29.7.2006 some employees retired at the age of 58 years. Some of them moved this Court but since one Bench had already decided the issue in the case of Kameshwar Mahto that the employees of the Corporation had no legal right to get their age enhanced to 60 years, therefore, based on the order of Kameshwar Mahto which is reported in 2005(4) PLJR 498 other writ applications came to be dismissed. Quite a few writ applications also came up for consideration before this Bench and this Bench also taking notice of some of those orders including the order passed in the case of Kameshwar Mahto dismissed those writ applications. This Bench was bound by rule of precedence and therefore it passed similar order.

3. But the matter has not come to rest and other writ applications have again come up before this Bench with similar kind of reliefs. But one striking part in these writ applications specially in C.W.J.C. No. 1241 of 2006 is that the petitioners have brought additional material on record to demonstrate that the earlier order which is annexure-A to the counter affidavit filed in C.W.J.C. No. 124 of 2006 based on which many employees were retired was no order at all. In this regard notice must be taken of annexure-16 which is a decision taken by the Board of Directors to consider enhancement of age of the employees of the Corporation to 60 years. The decision of the Board to take opinion of the learned Advocate General which is at annexure-14 and the final decision by virtue of which the age of superannuation was enhanced to 60 years from 25.7.2006.

4. From perusal of these documents a sequence has emerged which casts a serious doubt on the order dated 9.5.2005 based on which many employees were retired at 58 years of age. Petitioners state that if this order was in existence then the Board of Directors while reconsidering the matter on 22.7.2006 would have surely referred to this decision. Even the Advocate General in his opinion did not take note of existence of the order dated 9.5.2005 issued under the signature of the Chief of Administrator. The petitioners therefore submit that there are many new materials on record which demands reconsideration of the matter and issue afresh. Learned Counsel for the petitioners, therefore submits that the earlier order of the Hon"ble Single Judge passed in Kameshwar Mahto should be declared as per-incuriam and the matter should be heard in totality and issues raised in these writ application be decided

afresh.

5. It may be taken note of that Kameshwar Mahto filed LPA No. 102 of 2005 against the order of this Hon"ble Singe Judge. LPA vide order dated 29.11.2006 was dismissed but liberty was granted to the petitioner to take recourse to law for enforcement of his right in view of the subsequent decision dated 29.7.2006. This is the order enhancing the age of retirement of employees of Corporation to 60 years. The said Kameshwar Mahto is again before this Court in C.W.J.C. No. 752 of 2007.

6. There is sufficiency of material and prima facie this Court does feel that the issues need reconsideration. But since even this Bench and some other Benches went along with the logic of the order passed in Kameshwar Mahto earlier, therefore, if this Bench proceeds in the matter and decides the issue afresh it may lead to conflicting decision which may not be desirable.

7. Accordingly this Bench in the interest of justice and for the reasons indicated above opines that these matters require consideration by a Division Bench so that the question raised by the petitioners in these writ applications may be decided and issues allowed reach finality in the interest of large number of employees who have been retired at 58 years of age. Let these writ applications be placed before the Hon"ble the Chief Justice for appropriate direction or orders.