
(2008) 08 PAT CK 0103
In the Patna High Court
Case No : CWJC No. 619 of 2007

Arun Kumar Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 4 PLJR 449

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Abhimanyu Sharma and S.S. Sundaram, for the Appellant; K.N. Singh for Respondent Nos. 4 to 6, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard Learned Counsel for the parties. Petitioner is permanent employee of Kiul-Badua-Chandan, Command Area Development Agency, Bhagalpur (hereinafter referred as K.B.C., CADA). He is aggrieved by a decision dated 23.8.2006 by virtue of which he had been asked to superannuate from 31.1.2007 on reaching the age of 58 years. His contention is that this decision taken by the respondents has taken away his valuable right to enhanced age of retirement like other Government employees which has been refixed at 60 years by virtue of a decision dated 24.3.2005 which has been brought on record as Annexure- 5 to the writ application.

2. The primary contention of the petitioner is that when K.B.C., CADA came into existence the Board of Agency in its meeting dated 1.6.1983 categorically decided that till the service regulations and rules are framed and approved by the State Government the service condition applicable to the State Government employees shall be applicable to the employees of the respondents. Thereafter no rule or regulation was formulated or notified by the respondents all these years. The respondent agency has been applying the service conditions available to the State Government for its employees.

3. The claim of enhancement of age of retirement was earlier made in some other writ applications and subsequently even a contempt was filed for taking decision in this regard by the Command Area Development Authority. A direction therefore came to be issued by the High Court fixing a time frame within which the Board of Directors would take a decision in this regard. The Board of Directors was to put in place or constituted vide notification dated 17.2.2007. But in view of the High Court direction in the contempt application the Chairman in anticipation of the approval of the Board vide order dated 30.3.2007 decided to enhance the age of retirement of its employees from 58 to 60 years. By virtue of the said decision the employees who continued to be in service drew advantage but the petitioner has been left out. A conscious decision was taken by the respondents to make the decision applicable from the date of issuance i.e. 30.3.2007.

4. The question therefore arises for consideration by this Court whether the benefit of enhanced age of retirement to employees can be made applicable in such a manner. No doubt the hands of the respondents were forced because of a judicial order passed by this Court in a contempt application but then that cannot be made a ground for making it operational or enforceable only from the date of decision taken in this regard specially in the background the issue of enhanced age of retirement of the employees of CADA has come to be made available to the employees based on a decision taken by the State Government way back on 24.3.2005 and by corresponding amendment in Rule 73 of the Bihar Service Code.

5. Efforts has been made by the respondents in the counter affidavit which has been filed by them to justify the decision of enhanced age of retirement from 30.3.2007. They do not have any cogent explanation as to why it should be allowed to be done especially when even as of today their service regulation has not yet been framed or put in place. In absence of said regulation or rule the earlier decision taken by the Board of Directors to apply the Bihar Service Code in matters relating to the employees of the respondents continues to be in place. Discrimination cannot be practiced by them by taking a stand that a decision has now been taken in anticipation of the Board's approval on 30.3.2007.

6. In the opinion of the Court both in view of 1983 Board's resolution as well as Article 14 of the Constitution of India prohibits them from taking such a stand.

7. Not only this issue of similar kind in relation to some other Boards and Corporations claiming benefit of enhanced age of retirement came up before a Division Bench of this Court for consideration in the case of Mahesh Prasad and Others Vs. The State of Bihar and Another, . The Court in similar circumstances had come to opine that till such time the service rules are formulated by the Corporation, the adoption of the earlier resolution of making applicable the service conditions of State Government employees or such other rules will entitle the employees to claim enhanced of age of retirement.

8. That being the legal position as of now and also the factual position taken note of by this Court in earlier part of the order the petitioner has made out a case for interference. The order dated 23.8.2006 therefore stands quashed. The respondents are directed to accept the joining of the petitioner forthwith and he will be allowed to be in service till he reaches the age of 60 years by way of superannuation. It is also made clear that the petitioner shall be entitled to claim his salary and other allowances for the period he was made to retire from 31.1.2007 till his joining. The principle of no work no pay will not come in play in grant of such benefit to him. This writ application is allowed.