(2015) 01 PAT CK 0107

In the Patna High Court

Case No : LPA No. 1438 of 2013 in CWJC No. 11337 of 2013

Bhola Prasad Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 2 PLJR 308

Hon'ble Judges : L. Narasimha Reddy, C.J;Gopal Prasad, J

Bench : Division Bench

Advocate : Arun Kumar, for the Appellant; Prashant Kumar, Prashant Kumar Chaudhary and Sushant Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J—This Letters Patent Appeal is preferred against the order dated 20.9.2013, passed by the learned Single Judge in C.W.J.C. No. 11337/13. The petitioner therein is the appellant. Relevant facts are as under. The appellant was employed as an untrained teacher in a private school, in the Supaul District on 5.12.1970. The institution was taken over by the Government in the year 1981 under a scheme. Accordingly, the appellant became an employee of the Bihar Primary Education Board. He was retired from service on 31.12.2012 through an order dated 10.12.2012. The writ petition was filed challenging the order of retirement. It was pleaded that his date of birth is 29.5.1957 and, on that basis, he is not entitled to remain in service till he attains the age of 60 years, reckoned with reference to that date.

2. The plea of the respondents was that the petitioner is liable to be retired from service on completion of 42 years of service, and viewed from that angle, he completed the 42 years of service in December, 2012 and, accordingly, he was retired from service. Reliance was placed on the judgment of Full Bench of this Court in Ragjawa Narayan Mishra Vs. Chief Executive Officer, Bihar Rajya Khadi Gramoudyog Board and Others, (2006) 2 CTLJ 108 : (2006) 2 JCR 131 : (2006) 1 PLJR 410 . The learned Single Judge dismissed the writ petition through the

order under appeal.

3. Shri Krishna Nandan Singh, learned Senior Counsel for the appellant, submits that the Full Bench of this Court did not take into account, several aspects, and the facts of that case are different from those of the present case. He submits that the date of entry into Government service becomes relevant and the length of service, if at all, must be calculated with reference to that date. It is also his case that there is no statutory basis for the plea that an employee can be retired on completion of 42 years of service, and invariably the date of birth must be the guiding factor. He placed reliance on the judgment of a Division Bench Jharkhand High Court reported in Ganesh Ram Vs. State of Jharkhand and Others, (2006) 110 FLR 156 : (2006) 2 JCR 489 .

4. Shri Manish Kumar, learned G.P.-8, on the other hand, submits that the Full Bench of this Court dealt with every aspect of the matter and, in fact, illustrations were also provided. He contends that if the plea that the appellant was an employee from the date that he joined, is taken as true, it emerges that his age was 13 years, and on that ground alone he was liable to be disregarded for being absorbed into Government service. He submits that even if there are avenues of service for an individual, he can enter into a contract in that behalf, only on attaining the age of majority i.e. 18 years and, viewed from any angle, one can render service only for a maximum period of 42 years, and not beyond that, if the age of superannuation is 60 years.

5. The education system in the State of Bihar was not that encouraging. The establishment of schools by the Government was not to the extent, it was needed. Many private schools were functioning. Obviously, with a view to improve the conditions of the teachers in private institutions, and to regulate them, the Government formed a scheme in the year 1981. Such of the schools that were in existence in 1971 were brought under the control of the State Government, subject to certain conditions.

6. One of the important developments was that the teachers, who were appointed by the private management, were brought under the purview of the Board and they became the employees of the Government. It is natural that the service for the purpose of increments, promotion or pension, can be only the one rendered after the take over. However, in the context of determining the age of superannuation, the relevant Rules under the Pension Code become relevant.

7. The age of superannuation for the employees in the Government service was 58 years and, in the recent past that was enhanced to 60 years. The minimum age of entry into service of an employee was not certain, in the State of Bihar. For some time, it was 16 years and thereafter it was enhanced to 18 years. Obviously, there were indiscriminate claims about the dates of birth, and, as a consequence, the date of superannuation. Circulars were issued to the effect that wherever the age of superannuation is 58 years, the employee would be liable, to be retired on completion of 40 years of service and in case it is 60 years, on

completion of 42 years of service, irrespective of the date of birth of the employee. It is in this context, that the appellant herein was retired in December, 2012..

8. The question as to whether the date of birth of an employee can be the only factor to be taken into account in determining the age of superannuation, was dealt extensively by a Full Bench of this Court in Ragjawa Narayan Mishra''s case (supra). In fact, the learned Single Judge made a detailed reference to that judgment and dismissed the writ petition.

9. The Full Bench, not only referred to the relevant provisions of the Pension Code, but also to the Circulars, as well as, the general principles pertaining to the eligibility or capacity to contract. The cases of the two appellants therein were demonstrated with reference to the relevant dates. Ultimately, their Lordships held that the person can enter into service only on completion of 18 years of age, and the date of retirement can be reckoned only by taking into account the date of entry into service, on attaining majority. The said approach totally accords with the common law of contract as well as the public policy. A citizen cannot be allowed to plead that he entered into service when he was aged 13 years and he is entitled to remain in service for decades together on the basis of a totally unverified date of birth. In the instant case, the learned Single Judge made elaborate comments about the failure or refusal on the part of the petitioner to place the Matriculation certificate to verify his date of birth.

10. Learned Sr. Counsel Shri Krishna Nandan Singh submits that the service rendered in the private institution before the take over by the State cannot be treated as the basis for determining the age of superannuation. We do not agree with the proposition. The reason is that the sole basis for the appellant to be taken into Government service was the fact of his having been employed in private institution. If that is to be ignored, he does not become entitled to absorption in service at all. Therefore, the fact which constituted the basis for his being taken into government service, cannot be ignored, in the context of determining the date of superannuation. It is a different matter that the service rendered before the take over cannot be treated as holding good, for calculation of pension. However, in the context of determining the total length of service, it is certainly a relevant factor.

11. The learned counsel for the appellant placed reliance upon a judgment of the Jharkhand High Court (supra). Firstly, it is purely persuasive in nature and secondly, it cannot be a basis for us to ignore a Full Bench judgment rendered by this Court.

12. We, therefore, dismiss the appeal.

13. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.