
(2008) 09 PAT CK 0003

In the Patna High Court

Case No : LPA No's. 573, 578, 582 and 918 of 2007

Bihar State Co-operative Milk Producer's Federation Ltd. and
Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 66B

Citation : (2008) 09 PAT CK 0003

Hon'ble Judges : C.M. Prasad, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Lalit Kishore, Rajesh Pd. Choudhary in all, for the Appellant;
Narendra Pd., Akashdee, Yogendra Mishra and M/s Rajesh Kr. Sinha, Rajesh
Kumar, Shiv Kumar, Prabhu Narayan Sharma, Satya Deo Kumar and Alok Kumar
for the state, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and C.M. Prasad, JJ.—These appeals are against a common judgment and order rendered by a learned Single Judge of this Court, whereby and under four writ petitions filed by the respondents in these appeals were allowed. The respondents in these appeals are the employees of the appellant. In the writ petitions, the respondents had put forward three contentions namely:-

(A) The respondents were employees of Bihar State Dairy Corporation. Bihar State Dairy Corporation decided that they will follow the Rules governing the service conditions of the employees of the State Government pending Rules in that regard are made by the Corporation. No Rules were made by the Corporation or by its successor. The Bihar Service Code applies to the employees of the State Government, in terms whereof the age of superannuation was 58 years, which stood enhanced to 60 years by reasons of alteration effected by the State Government to Bihar Service Code on 24th March, 2005. The age of superannuation of the respondents thus stood enhanced to 60 years.

(B) Bihar State Dairy Corporation, which was wholly owned and controlled by the State Government, was decided to be dissolved by the State Government, when it was also decided that the assets and properties of the Corporation will vest in the appellant. At the same time, it was decided that the employees of the Corporation, who are competent to be appointed in the appellant should be appointed in the appellant, but employees of the Corporation, who are not competent to be appointed in the appellant but otherwise competent, should be appointed in other organizations of the State Government and the remaining would be retrenched. It was contended that retrenchment did not take place and they and the other employees, who were not competent to be appointed in the appellant, have been shifted to other organizations where the age of superannuation has been increased to 60 years and accordingly, if age of superannuation of the employees of the appellant is not increased to 60 years that would bring about discrimination.

(C) Section 66B of the Bihar Cooperative Societies Act, 1935 grants overriding power to the State Government to alter conditions of service of the employees of Co-operative Societies, the appellant is a Co-operative Society and in exercise of such power, the Government has on 15th May, 2006 increased the age of superannuation of the employees of Cooperative Societies to 60 years.

2. It was contended that in that background, the respondents are entitled to serve the appellant till they reach the age of 60 years. Additionally, it was contended that after the order was made u/s 66B of the Act, the matter had been gone in extenso by the Managing Director of the appellant and he recommended enhancement of age of superannuation of the employees of the appellant to 60 years, but the Board of Directors of the appellant without recording any reason turned the same down.

3. By the judgment and order under appeal, a learned Single Judge accepted the contention of the respondents, as highlighted in Clause-C above, but did not address contentions highlighted in Clauses A and B above. The learned Judge felt that when the recommendation of the Managing Director was supported by elaborate considerations, there was no just reason on the part of the Board of Directors of the appellant not to accept such recommendation without a speaking order. The learned Judge felt, as appears from the directions contained in the order that by the order dated 15th May, 2006, the State Government in exercise of its power u/s 66B of the Act has increased the age of superannuation of the employees of Co-operative Societies, including that of the appellant, to 60 years and accordingly, the respondents are entitled to the benefit thereof. The judgment and order under appeal, however, permitted the appellant to reconsider the matter while directing the appellant to permit the respondents to serve until the age of 60 years.

4. In the appeals, the appellant is seeking to contend that the said order of the Government dated 15th May, 2006 does not permit the appellant to enhance the age of superannuation of its employees to 60 years. The counsel for the

respondents have drawn our attention to the pleadings of the appellants before the writ Court for the purpose of showing that there was no such plea on the part of the appellant before the writ Court. In this connection, learned counsel for the respondents also cited a judgment of a Division Bench of this Court rendered in *Gopaljee Jha Vs. State of Bihar and Others*. That was a case where an order in a disciplinary proceeding was challenged. In that case, after having had lost before the writ Court, the writ petitioner in the appeal for the first time purported to contend that the enquiry report was not served upon him. In that context, the Division Bench stated that such a new plea cannot be taken in the appeal and thereby cause surprise. Whether or not the enquiry report was served was a question of fact, which for the first time could not be taken in the appeal. In the instant case, the order of the Government dated 15th May, 2006 was on record together with the recommendation of the Managing Director, upon which reliance had been placed by the respondents themselves. What the appellant is seeking to contend before us is that by looking into the order of the Government dated 15th May, 2006, in the backdrop of the findings recorded by the Managing Director in this recommendation, it cannot be said that the appellant was entitled to increase the age of superannuation of its employees to 60 years.

5. The provisions contained in Section 66B of the Act grants an overriding power to the State Government to prescribe, amongst others, conditions of service of the employees of Co-operative Societies by issuing special or general order. The moment such an order is issued by the State Government, service conditions of the employees of Co-operative Societies stand altered to that effect. In the instant case, there is no dispute that by exercise of such power, the State Government on 15th May, 2006 issued an order. The order directed increase of age of superannuation of employees of Cooperative Societies to 60 years with a direction that to that effect existing service conditions of the employees of the Co-operative Societies will stand altered. The Government, however, made it absolutely clear that such directions are applicable only to those Co-operative Societies, who have achieved four criterias mentioned in the said order dated 15th May, 2006 and one of the criterias mentioned therein is that the Co-operative Society has been able to keep its overhead expenses within 2% of its working capital. Therefore, by the said order, the Government has directed that one set of Cooperative Societies, who have achieved the standards specified in the order, to increase the age of superannuation of their employees up to 60 years and restrained the Co-operative Societies, who have not been able to achieve those standards, from increasing the age of superannuation of their employees to 60 years. The Managing Director of the appellant in his recommendation mentioned in no uncertain terms that the appellant has not been able to achieve one of the standards, namely to keep its overhead expenses within 2% of its working capital, but despite that he justified increase of the age of superannuation of the employees of the appellant to 60 years. The Managing Director, therefore, while making recommendation found as a fact that in terms of the said order of the Government dated 15th May, 2006, the age of

superannuation of the employees of the appellant cannot be increased to 60 years, but- for effecting such an increase, he gave his personal views. The order dated 15th May, 2006, while is positive in relation to those Cooperative Societies, who have achieved the earmarked standards, is negative in relation to those Co-operative Societies, who have not been able to achieve the same. In those circumstances, non-acceptance of the recommendation of the Managing Director by a non-speaking decision of the Board of Directors was of no serious infirmity.

6. The respondents have not brought on record facts pertaining to employees of the Corporation, who for not achieving standard could not join the appellant, and accordingly, were absorbed in other organizations, apart from taking a plea in that regard. They have also not brought on record that those organizations have increased the age of superannuation to 60 years. The plea taken is totally unsupported by any evidence. In the circumstances, the learned Judge, who dealt with the writ petitions correctly did not venture to go into the question of discrimination.

7. The service Rules of the employees of the appellant have been relied by both parties. Therefrom, it appears that bye law 26 of the appellant authorized it to frame Rules for proper conduct of business of the appellant, which can only be implemented after approval of the Registrar, Co-operative Societies. It appears from those Rules that the same were approved by the Registrar, Co-operative Societies on 10th July, 1984. Accordingly, the Rules were framed on 10th July, 1994 and as such, the decision of the predecessor in interest of the appellant that pending framing of Rules it would follow the Rules contained in Bihar Service Code came to an end. In the Rules so framed, it has been specifically pointed out that age of superannuation of the employees of the appellant shall be 58 years, except those to whom the Industrial Employment (Standing Orders) Act, 1946 applies. It is not the contention of the respondents that the Industrial Employment (Standing Orders) Act, 1946 applies to any one of them.

8. The learned counsel for the respondents lastly contended that Clause-C of the order dated 15th May, 2006 i.e. the Co-operative Societies being able to keep its overhead expenses within 2% of its working capital, is applicable to Co-operative Banks. In this connection, reference was made to papers wherefrom it appears that such a condition was imposed sometimes in 1994-1995 when Co-operative Banks were permitted to increase salaries payable to their employees. When representation of the employees of the Cooperative Banks for increase of their age of superannuation was taken up for consideration by the State Government, the said condition was also taken note of. At the same time, as appears from such papers, the State Government decided to take a decision pertaining to increase of age of superannuation of the employees of other Co-operative Societies too and accordingly, came up with one order dated 15th May, 2006 and not two separate orders, one applicable to Co-operative Banks and the other applicable to other Co-operative Societies. The learned counsel drew our attention to the file notes of the Secretary, where he opined that the said

condition of the order dated 15th May, 2006 is applicable to Co-operative Banks. That is only the view of the Secretary concerned, but not of the State Government.

9. The learned counsel for the appellant cited a judgment of the Hon''ble Supreme Court rendered in Baddula Lakshmaiah & Ors. vs. Sri Anjaneya Swami Temple, reported in 1996 PLJR 27, for reminding us that in L.P.A., the Division Bench deals with a judgment rendered by a learned Single Judge of the High Court and not by a Court below. We have failed to appreciate the reason for citing the judgment. Be that as it may, in the event appellant is not one of those Co-operative Societies, who has been authorized by the order of the Government dated 15th May, 2006 to increase the age of superannuation of its employees, then the respondents had no legal right which they could enforce by the writ petitions. The conclusion being that the said order did not authorize the appellant to do so, we allow the appeals, set aside the judgment and order under appeal and dismiss the writ petitions.