(2017) 04 JH CK 0051

In the Jharkhand High Court

Case No : 600 of 2012

Binod Kumar Yadav & Ors. APPELLANT

Vs

The State of Jharkhand & Ors. RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

Jharkhand Service Code, 2001, Rule 73

Citation : (2017) 04 JH CK 0051

Hon'ble Judges : Dr. S. N. Pathak

Bench : SINGLE BENCH

Advocate : S.S. Choudhary, ?Rahul Pandey, ?Randhir Kumar, ?Mrinal Kanti Roy

Final Decision : Disposed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The instant writ application has been filed by the petitioner for following reliefs:-

(I) For directing the respondents to grant the benefit of extension of age of superannuation from 58 years to 60 years with retrospective effect and the date of retirement of petitioner be treated as 30.06.2008 instead of 30.06.2006, as per the amended Rule 73 of Jharkhand Service Code.

(II) For directing the respondents to make payment of entire salary, arrears of salary, gratuity, retirement and all other monetary benefits treating his age of retirement as 60 years.

(III) For directing the respondents to pay all other benefits and perks for which this petitioner is entitled to in his extended service with retrospective effect.

FACTUAL MATRIX

3. The petitioner was appointed as Assistant in Bihar State Food & Civil Supplies

("BSFCS" for short) on 11.12.1974 and after a long span of time, he has been promoted to the post of Assistant Manager with retrospective effect on 05.10.1989. Previously, the respondent-Corporation has taken a resolution on 21.05.1973, the relevant portion of which reads as under:-

"Resolved that until such time as the Service Code, Financial Rule, etc. are framed by the Corporation, provisions made in the Bihar Service Code ..... applicable to the State Government employees adopted for employees of the Corporation."

Untill 23rd March, 2005, in terms of Rule 73 of the Bihar Service Code, the age of superannuation of the Officers and Employees of the State Government was 58 years. On 24 th March, 2005, the State Government amended Rule 73 of the said Service Code by enhancing the age of superannuation of its Officers and Employees from 58 years to 60 years. In this regard, it is relevant to mention here that the petitioner was superannuated on 30.06.2006, on attaining the age of 58 years, i.e. after amendment of Rule 73, by which the age of superannuation of Officers and Staff of State Government has been enhanced from 58 years to 60 years.

4. The similarly situated persons, who have been discriminated by the respondents on this ground, have moved before the Hon''ble Patna High Court by filing C.W.J.C. Nos. 1241 of 2006, 5945 of 2006, 16139 of 2006, 7257 of 2006 and 752 of 2007, in which they lost their cases. However, in L.P.A. No. 829 of 2007, the Hon''ble Patna High Court held that the employees of respondent-Corporation are entitled for retirement upto the age of 60 years and a clear-cut direction was issued to the respondents to strictly comply the order but the Corporation challenged the said order before the Hon''ble Apex Court by filing S.L.P (Civil) No. 10387-10388 of 2008. The Hon''ble Apex Court vide order dated

02.05.2008 has dismissed the aforesaid SLP preferred by the respondent. Thereafter, the respondent again filed Review Petition No. 2111-2112 of 2009 but the same was also dismissed by the Hon''ble Apex Court vide its order dated 11.02.2009 and hence, it has now become the absolute Rule that the employees of respondent-Corporation, who retired after 24.03.2005, are entitled to the benefit of retirement at the age of 60 years.

5. When the petitioner got the knowledge about the aforesaid order, he submitted an application on 20.01.2008 for joining into the service, to the respondents-authorities at Gumla, from where he has retired but the respondents have not allowed him to join into the service. The petitioner has filed several representations including representation dated 22.02.2010 before the respondents-authorities but they are sitting tight over the matter and ignored the provisions of amended Rule 73 as well as the various orders passed by the Hon''ble High Courts and the Hon''ble Apex Court in this regard. Hence, this writ petition has been filed by the petitioner for redressal of his grievance.

6. Learned counsel for the petitioner, Mr. S.S. Choudhary, submits that malafide

and arbitrary action of the respondents is clear from the fact that the benefit of amended provisions of Rule 73 has been given only to those employees who have preferred writs before the Hon''ble High Courts and the same has been denied to the petitioner as he has not preferred any writ earlier. Learned counsel further submits that in view of the aforesaid facts, the petitioner is very much entitled for the reliefs as claimed in para-1 of the writ application and the petitioner has no other alternative or efficacious remedy save and except to move before this Hon''ble Court by way of writ application.

7. Per contra counter-affidavit has been filed by the respondents.

Learned counsel appearing for the respondents, vehemently opposes the prayer of the petitioner and submits that the Managing Director of the Corporation had issued Office Order by which all the employees of Corporation were directed to superannuate on attaining the age of 58 years. Upon such direction, the respondent No. 3 had issued Office Order (Annexure-1 to the writ application), by which the petitioner was directed

to superannuate on 30.06.2006 on attaining the age of 58 years. Subsequently, the Board of Directors of respondent-Corporation had issued a notification dated 29.07.2006, thereby extending the age of superannuation of its Officers & Employees from 58 years to 60 years. Later on, vide Order dated 17.01.2008, passed in LPA No. 829 of 2007 and other analogues cases, the Division Bench of Hon''ble Patna High Court had directed the respondent-Corporation to treat the concerned employees to have served till 60 years and the same has also been affirmed by the Hon''ble Apex Court. Learned counsel further submits that after the order of Hon''ble Apex Court, several employees who were going to retire in between 24.03.2005 to 28.07.2005, have also preferred writs for monetary benefits on the ground of extension of age but the petitioner has never approached the Hon''ble Court and had voluntarily accepted his date of retirement and after a long span of time, has preferred this writ application, which may dismissed as time barred.

8. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner deserves consideration in view of the catena of decisions of the Hon''ble Apex Court and that of the High Courts. It is relevant to mention here that there are two types of employees, one who had approached the Hon''ble Court within time after their retirement and other who had accepted their retirement but when the matter was settled upto the Hon''ble Apex Court, then approached the Hon''ble High Court for the same relief. The reasons for the Corporation not implementing the judgments of the Division Bench with respect to all the employees who had superannuated between 24.03.2005 to 28.07.2006 is concerned, the respondents has relied on the judgment passed by the Hon''ble Supreme Court in case of U.P. Jal Nigam & Anr. Vs. Jaswant Singh and Anr., reported in (2006) 11 SCC 464, decided the similar issue, relevant portion of which is reproduced herein below:-

"When a person is not vigilant of his rights and acquiesces with the situation, and the acquiesces prejudices, or there is change of position on the part of the party allegedly violating the rights such person''s writ

cannot be heard after the delay on the ground that the same relief should be granted as was granted to persons similarly situated but who were vigilant of rights."

9. Relying on the aforesaid judgments, the respondent- Corporation preferred LPA Nos. 850 of 2009 and 922 of 2009, before the Hon''ble Patna High Court, which has been dismissed vide Judgment and Order dated 22.02.2011 and against the said decision, preferred SLP before the Hon''ble Supreme Court, which is pending for consideration. It appears from the relevant facts of the case, in terms of Rule 73 of the Bihar Service Code, the age of superannuation of the Government employees was 58 years. Consequent upon the amendment of Rule 73 of the Code, the age of superannuation of the Officers and Employees of the State Government was enhanced from 58 years to 60 years and a notification to this effect was issued on 24.03.2005 by the State of Bihar. Since, the provisions of the Bihar Service Code were not ipso facto applicable to the respondent- Corporation, a resolution was adopted by the respondent- Corporation on 21.05.1973 to the effect that till such time as the Service Code, Financial Rules, etc. are framed by the Corporation, the provisions made in the Bihar Service Code, as applicable to the State Government employees, be adopted for the employees of the Corporation. The respondent-Corporation took a final decision on this issue by passing a resolution on 29.07.2006 enhancing the age of superannuation of its employees from 58 years to 60 years. This issue fell for consideration before the Division Bench of the Hon''ble Patna High Court in L.P.A. No. 829 of 2007 and the Division Bench had observed as under:- "........While on and from 24th March, 2005, in terms of the Service Code as applicable to the State Government employees, the State Government employees became entitled to serve upto the age of 60 years, since by that time no Service Code or Financial Rules had been framed by the Corporation, in terms of the Resolution dated 21st May, 1973 the officers and employees of the Corporation became entitled to the same benefit".

On the basis of the above observations, the Division Bench of the Patna High Court had declared that those employees of the Corporation

who were made to retire in between 24th March, 2005 to 29th July, 2006, were entitled to continue in service till their age of 60 years and accordingly they were entitled to their salaries till the age of 60 years.

10. As a cumulative effect of the aforesaid rules, guidelines and the judicial pronouncements, I am fully convinced that the judgments rendered in the case of U.P. Jal Nigam (supra), as referred to by the learned counsel for the respondents, would not apply to the facts of the case of the petitioner in the present case. On the other hand, facts of the petitioner''s case is identical to the

facts of the writ petitioners in LPAs filed and decided before the Division Bench of Hon''ble Patna High Court.

11. Resultantly, the writ petition stands disposed of in the same terms and the same directions as contained in the judgment of the Patna High Court passed in LPA No. 829 of 2007 and analogous appeals. Since the petitioner has already superannuated, therefore, the decision will be implemented by way of paying the salary, treating as if the petitioner has served till the age of superannuation, as mentioned in the decision of the Patna High Court. All the consequential retirement benefits will be made available to the petitioner accordingly. The decision in the terms stated above shall have to be taken and implemented by the concerned authorities of the respondents within a period of three months from the date of receipt/ production of a copy of this order.

12. Needless to say that as the issue is no more res-integra, the respondents authorities, on receipt of a copy of this order and taking into account the fact that similar orders have been passed by the Hon''ble Patna High Court and affirmed by the Division Bench of the Hon''ble Patna High Court in L.P.A. No. 829 of 2007 and analogous cases, decide the matter and if there is no legal impediment, the benefits may be extended to the petitioner within a further period of one months from the date of decision.

13. With the aforesaid observation, the writ petition stands disposed of.

