
(2009) 07 PAT CK 0021
In the Patna High Court

Chandshwar Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

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

Citation : (2009) 07 PAT CK 0021

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—The petitioner was Section Officer-cum-Development Officer of the Begusarai Central Cooperative Bank Limited and challenges Annexure-1 being the order of the Managing Director dated 19.07.2007 by which he was intimated that he would be retiring on 31.07.2007 on completion of 58 years of age and directing him to hand over charge to another as a consequence thereof.

2. Counter affidavits have been filed and with consent of parties, the writ application is being disposed of after hearing at this stage itself.

3. The principal challenge of the petitioner is based on the fact that on 24.03.2005, the State Government amended the Bihar Service Rules, namely, Rule 73 and provided for superannuation of State Government employees at the age of 60 years instead of 58 years earlier provided. It appears that at that time, the Begusarai District Central Cooperative Bank was under supersession and the District Magistrate -cum- Collector, Begusarai was acting as the Administrator thereof. In view of the aforesaid action of the State Government, the Administrator decided to enhance the age of superannuation of the employees of the Begusarai Central Cooperative Bank to 60 years and sought approval of the Registrar, Cooperative, Government of Bihar in this regard. It is not in dispute that no approval was received nor any disapproval communicated. The matter

remained thus and consequently the petitioner has been made to superannuate on 31.07.2007. Petitioner, in the writ petition, and the respondents, in the counter affidavits, have mentioned about various resolutions of the State and the Cooperative in question after petitioner's superannuation which I deem not necessary to consider as any change in Service Conditions after a person has superannuated would not affect the person. Petitioner submits that the District Magistrate -cum- Collector being the Administrator and, hence, performing the functions of the Board of Directors of the Cooperative had competently taken a decision to enhance the age of superannuation and that being so, the petitioner could not be superannuated at the age of 58 years. On behalf of the Cooperative, it is submitted that in fact the Collector -cum- District Magistrate, acting as the Administrator had not enhanced the age of superannuation. It had sought approval of the Registrar in this matter and the approval having not been received, it was not acted upon. Secondly, it was submitted that even otherwise, the Administrator had no authority to take such a decision nor for that matter even the Board of Directors were not competent to take such a decision at that point of time.

4. In order to appreciate the rival contentions, it is necessary to note that in 1994, the State Government, in the Department of Cooperative, notified Service Rules in relation to employees of all Central Cooperative Banks. This was done in purported exercise of power u/s 66B of the Bihar Cooperative Societies Act, 1935 and the Rules framed thereunder. Section 66B, as it then was, gave overriding authority to prescribe the Service Conditions of Employees of, inter alia, Central Cooperative Banks and the said Section itself provides for any violation, penal action could be taken. Thus seen, the provisions and the nature of power, as contained in Section 66B, is mandatory in nature.

5. Once such Service Rules were framed and issued by the State Government then it goes without saying that it is the State Government alone or an authority of superior efficacy or an authority designated therein who could alter and/or amend Rules. No authority has been given to the Cooperatives to amend the Rules much less to its Board of Directors and consequently the Administrator.

6. In that view of the matter, in my view, even if the Collector-cum-District Magistrate, acting as an Administrator, had taken a decision, taking note of decision of State Government dated 24.03.2005 to enhance the age of superannuation of employees of Begusarai District Central Cooperative Bank, such a decision was non est in the eye of law. It was wholly without jurisdiction. It cannot be acted upon. Thus, on the date of superannuation of the petitioner, there being no other decision of any competent authority enhancing the age of superannuation of employees of the Central Cooperative Bank much less of the petitioner's Bank, the petitioner's superannuation, on completion of age of 58 years, cannot be said to be wrong or illegal in any manner.

7. The writ petition, thus, merits no consideration and is dismissed accordingly.