

(2006) 11 JH CK 0018
In the Jharkhand High Court

Deonandan Mandal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Citation : (2007) 3 JCR 130

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—Vide order dated 24th June, 2004 petitioner has been ordered to retire from service with effect from 30th June, 2004, on completing 40 years of service. It is this order which is under challenge in the present writ petition. It is stated that the petitioner's date of birth is 05.02.1947, which is recorded in the service records. He was appointed on 10th June, 1964 and is due to retire on 5th February, 2007 on completion of sixty years of age. However, he has been prematurely retired vide the impugned order without any valid reasons. Accordingly, a further direction is sought for payment of salary with effect from 1st July, 2004 till he attains the age of superannuation at the age of 60 years.

2. In the counter affidavit, filed by respondent No. 2, it is stated that the petitioner has been retired on 30th June, 2004 as per the direction, given by the Energy Secretary, Government of Bihar, Patna vide letter No. 3980 dated 27th October, 1999. In this letter it is mentioned that those government servants, who have completed 10 years of service and non-matriculate, must retire even though time of superannuation has not come. It is further stated that the petitioner applied for grant of retiral benefits, which were paid to him and he has received the same. Respondents have placed on record a copy of the application dated 19th August, 2004, whereby, the petitioner has requested for grant of retiral benefits.

3. I have heard learned Counsel for the parties and perused the records. It is not

in dispute that the petitioner has not completed 50 years of age. Admittedly, the age of retirement for State Government servants has been enhanced from 58 years to 50 years vide resolution impugned order, no reasons have been communicated why the petitioner has been retired on completing 40 years of service, though in the counter reference has been made to a Government circular of the unified State of Bihar. It is also stated that at the time of recruitment, petitioner was less than 18 years of age and his age was 17 years and 4 months. Age of retirement is provided under Rule 73 of the Bihar Service Code, 1952. In terms of this Rule, a government servant is to retire on attaining the age of 58 years. This age has been enhanced to 60 years by the Government in the year, 2004, as noticed hereinabove. Why the petitioner has been retired on completion of 40 years of service, no valid reason has been shown except reliance placed on a government circular. The issue involved in this case is no more *res integra*, having been decided by a Division Bench of this Court in the case of *Nagendra Singh v. The State of Bihar and Ors.* reported in 1995(1) P.L.J.R. 183, wherein, following observations have been made:

5. It is to be noted at this stage that Rule 73 envisages that a person would retire only on attaining the age of 58 years and does not say that a person would retire either on attaining the age of 58 years or on completing 40 years in service. In our opinion, therefore, there can be no justification for retiring the petitioner by arbitrarily pushing back his date of birth and assigning him an imaginary date of birth.

This view has been reiterated in the case of *Mantu v. Central Coal Fields Ltd. and Ors.* reported in 2002(2) J.L.J.R 407.

4. It is vehemently argued on behalf of the respondents that the petitioner, having accepted the retiral benefits, is stopped from challenging the impugned order. This argument is noticed, to be rejected. There can be no estoppel against law. If the law provides particular retirement age, any forced action cannot tender the provision redundant. Apart from that, I have perused the application of the petitioner for retiral benefits. This also demonstrates a sorry state of affairs. Petitioner was constrained to ask for retiral benefits on account of his ill health, which fact is also evident from the averments, made in the writ application and the medical evidence produced.

5. In view of the above circumstances, I allow this writ application and direct the respondents to pay salary to the petitioner with effect from 1st July, 2004 till he attains superannuation at the age of sixty years. It is for the respondents whether to re-induct the petitioner in service or to pay him salary even without getting any work from him. His retiral benefits will also be re-determined and paid, as if he retires at the age of sixty years.