

(2006) 04 JH CK 0087
In the Jharkhand High Court
Case No : L.P.A. No. 479 of 2005

Gauri Shankar Ram and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Bihar Service Code, 1952 — Rule 73

Citation : (2006) 2 JCR 482

Hon'ble Judges : S.J. Mukhopadhaya, J;D.K. Sinha, J

Bench : Division Bench

Advocate : Bhanu Kumar, for the Appellant; J.P. Gupta, Asstt. S.G.I and Suresh Kumar, J.C. to G.A., for the Respondent

Final Decision : Allowed

Judgement

1. Petition at Flag "L" (I.A. No. 1833 of 2005) has been filed for condoning the delay of 33 days in filing the instant appeal.

2. Having heard counsel for the parties and being satisfied with the grounds shown therein, the delay of 33 days in filing this appeal is condoned and the petition for condonation of delay (LA. No. 1833 of 2005) is hereby allowed.

L.P.A. No. 479 of 2005

The appellants were posted at Ranchi in the State of Jharkhand as Section Officer. They were guided by Rule 73 of the Bihar Service Code, 1952, wherein 58 years of age was prescribed for superannuation. The Government of Jharkhand amended Rule 73 vide Resolution No. 5826, dated 26th October, 2004, and enhanced it from 58 to 60 years.

3. The first appellant, Gauri Shankar Ram was to attain 58 years age on 30th November, 2004 whereas second appellant, Ram Badan Ram was to attain 58 years of age on 31st January, 2005. They being posted in the State of Jharkhand, get advantage of amended Rule 73 and continued beyond 58 years.

4. So far as age of superannuation of the employees of the State of Bihar is concerned, it was 58 years as per old Rule 73. The Government of Bihar amended Rule 73 vide Resolution No. 3A-7-Maha-01/2005-1500B(2), dated 23rd March 2005 and enhanced the age of superannuation from 58 to 60 years. Subsequently, the services of the appellants were allocated under State of Bihar by Central Government's Order No. 14(Jhr)/2005, dated 5th April. 2005.

5. It came to the notice of the Central Government that while the Statutory Advisory Committee, Bihar was in the process of the allocation of the State Service Personnel between the successor States, in the meantime, the Government of Jharkhand raised the age of superannuation by Notification dated 26th October, 2004 whereas the Government of Bihar raised the age of superannuation of its employees vide Notification dated 23rd March, 2005. What will be the position of the employee, in the meantime, if finally allocated to the other successor State, fell for consideration before the Central Government, which by its letter No. 28/43/2004-SRS, dated 29th March, 2005 communicated the followed decision:

Keeping in view the overall situation, the matter has been examined and the undersigned is directed to advise that-

(a) Those personnel who are posted in the State of Jharkhand and have attained the age of 58 years. Between 26.10.2004 and 23.3.2005 have been allocated to the State of Bihar, will be treated as superannuated on the day of attaining the age of 58 years. And they will get their pensionary/retiral benefits from the successor State of Bihar,

(b) Those personnel who are posted in Bihar and have attained the age of 58 years on or after 26.10.2004 and have retired but allocated to the successor State of Jharkhand will resume their duty/post in the State of Jharkhand w.e.f. the date of assuming the charge and their service will, be counted in continuity for the purpose of pensionary/retiral benefits but they will not get any salary for the period for which they have not worked due to their retirement in the State of Bihar and.

(c) All those personnel who have completed 58 years of age on or after 26.10.2004 may be provisionally relieved to the respective successor State as recommended in the revised final allocation list pending their final allocation by the Central Government if no representation has been received against their propose allocation.

6. In view of the aforesaid guidelines, as the appellants would have been treated to have superannuated on attaining 58 years of age in view of allocation of their services under the State of Bihar, they challenged the Order No. 14(Jhr)/2005, dated 5th April, 2005 before this Court, the learned Single Judge dismissed the writ petition.

7. The aforesaid guidelines fell for consideration before a Division Bench of this

Court in the case of Madheshwar Dhari Singh and Anr. W.P. (S) No. 4716 of 2005; see Madheshwar Dhari Singh and Krishnadeo Das Vs. The Union of India (UOI) and Others, . which was allowed by judgment dated 23rd March, 2006. This Court having noticed the guideline dated 29th March, 2005, issued by the Central Government, held clause (a) of paragraph 2 of the said guideline, as quoted above, as ultra vires and directed the respondents not to give effect to clause (a) of paragraph 2 thereof and the petitioners of the said case were allowed to continue in the State of Bihar upto the age of 60 years.

8. The case of the appellants being covered by the decision rendered in the case of Madheshwar Dhari Singh and another (supra), the impugned order dated 13th May, 2005 passed by the learned Single Judge in W.P. (S) No. 2603 of 2005 being against the decision of the Division Bench aforesaid, is not sustainable and is, hereby, set aside. The respondents are directed to provide the same benefit as allowed to petitioners, Madheshwar Dhari Singh and another and thereby allow them to continue in the service of the State of Bihar till they attain the age of 60 years.

9. The State of Bihar and its authorities are directed to issue appropriate notification of posting of the appellants, if not yet issued, with further direction to pay them full salary of the intervening period during which they were forced to remain out of service.

The appeal is allowed, with the aforesaid observations. However, in the facts and circumstances, there shall be no order as to costs.