(2016) 10 JH CK 0073

In the Jharkhand High Court

Case No : Writ Petition (S) No. 633 of 2008

Hari Singh APPELLANT

Vs

Hindustan Steel Works RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 AIRJharR 220 : (2017) 1 JBCJ 237 : (2017) 1 JCR 524 : (2017) 1 JLJR 1 : (2017) LIC 1899

Hon'ble Judges : Mr. Rajesh Shankar, J.

Bench : Single Bench

Advocate : Mr. Rohitashya Roy, Advocate. And Mr. Kumar Vaibhav, Advocate, for the Respondents; Mr. A.K. Sahani, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Rajesh Shankar, J. - Heard learned counsel for the parties.

2. The present writ petition has been filed for issuance of appropriate writ directing the respondents to pay forthwith all retiral benefits taking into consideration the date of retirement to be 30.06.2006 on the pay scale of Rs.12,000-18,000/- with interest @ 18% per annum from the date of superannuation till payment and also to consider the case of the petitioner for the post of Manager, with all consequential monetary and service benefits, including the allowances arbitrarily withheld by the respondents.

3. The factual matrix of the case in brief is that the petitioner was appointed on the post of Junior Assistant on 24.07.1973 and he was promoted to the post of Senior Assistant on 08.10.1977. Subsequently, he was promoted to the post of Office Superintendent (G) on 06.02.1985 and thereafter, in February, 1992, he was promoted to the post of Section Officer. The respondent-Hindustan Steelworks Construction Limited (a Government of India undertaking) had earlier accepted the offer of the petitioner for voluntary retirement under the Voluntary

Retirement Scheme w.e.f. 31.05.2003, against which the petitioner filed a writ petition before this Court being W.P(S) No. 2583 of 2003, which was disposed of on 05.12.2003 holding, inter alia, that the petitioner should be reinstated on the post and should be allowed to continue in the service till he attains the age of superannuation. It was also held, inter alia, that the petitioner should be entitled for the consequential benefits including the salary of the intervening period. Thereafter, the respondents filed Letters Patent Appeal being LPA No. 37 of 2004. Subsequently, in compliance of order dated 29.04.2004 passed in Contempt Case (C) No. 33 of 2004, the respondents paid the arrear of salary to the petitioner from the period w.e.f. 25.04.2003 to July 2003. Thereafter, the respondents vide letter dated 07/11.06.2005 (Annexure-2 to the writ petition), communicated the petitioner that since he had already attained the age of superannuation i.e., 58 years as on 19.06.2004, therefore, he should be treated to be retired w.e.f. 30.06.2004.

4. On perusal of the writ petition as well as the counter-affidavit filed by the respondents and various other pleadings exchanged between the parties during the pendency of the writ petition, it appears that though, the prayer of the writ petitioner was only with regard to the payment of retiral benefits to him considering the age of superannuation to be 60 years i.e., upto 30.06.2006, many other factual aspects have come up in the pleadings of both the sides.

5. The respondent-Hindustan Steelworks Construction Limited in paragraph no. 4 of its counter-affidavit dated 11.02.2009 has stated that the petitioner has already superannuated from service on 30.06.2004 on attaining the age of 58 years and all his admitted dues have been paid except P.F. and Gratuity for which he did not make any application in the prescribed format. The petitioner is in unauthorised occupation of the company quarter since 01.09.2004 and as such, he is liable to pay penal rent.

6. The petitioner has denied the allegations of the respondents made in the counter-affidavit dated 11.02.2009. In paragraph no. 6 of his affidavit dated 26.08.2015, the petitioner has also disputed certain factual statements made by the respondents in the counter-affidavit dated 03.07.2015 claiming, inter alia, that the interest for the delayed payment of Gratuity and Provident Fund should be made to the petitioner.

7. So far as the main issue i.e., payment of retiral dues to the petitioner on attaining the age of 60 years is concerned, the respondent-Hindustan Steelworks Construction Limited has stated in paragraph no. 19 of the counter-affidavit dated 11.02.2009 that the Steel Authority of India Limited (example cited by the petitioner) is a separate organisation having its own rules and it is the sole discretion of the Government of India to enhance the age of superannuation from 58 years to 60 years so far as the respondent-Company is concerned.

8. The issue regarding the enhancement of superannuation from the age of 58 years to 60 years is no more res-integra, as the same has already been settled

by the Hon''ble Supreme Court in the case of Sureshchandra Singh & Ors. v. Fertilizer Corporation of India Limited & Ors. reported in (2004) 1 SCC 592. The Hon''ble Apex Court, in paragraph no. 7 of the said judgment, has held as under:

7. "The appellants assail the decision of the Board on the ground of violation of principles of equality. It is alleged that the Board-level employees were allowed to continue in service till the age of sixty and employees like the appellants who were below the Board level were forced to retire at the age of fifty-eight. In reply the respondents submitted that the Board-level employees could not be equated and compared with the other employees. Wholetime directors, who are two in numbers, are directly appointed by the President of India for a fixed term of five years that could be reviewed even earlier; and that other members of the Board are Government servants and are nominees or representatives from various Ministries and are appointed by the President of India for a term of three years. In these circumstances we find that the Board of Directors themselves form a different class and cannot be compared with other employees in regard to conditions of service applicable to them. Allegation of discrimination is also raised by the appellants vis-a-vis employees of other corporations. Each public sector undertaking is an independent body/entity and is free to have its own service conditions as per law. However, all employees in FCIL who are working in its various units and divisions retire at the age of fifty-eight as per the relevant rules; and that even the future employees will retire at the age of fifty-eight. We also find that the employees of different corporations could not be treated alike since every corporation will have to take into account its separate circumstances so as to formulate its policy and consequently, the argument that there is discrimination of appellants vis-a-vis employees of other corporations also cannot be accepted. Thus, the appellants have failed on all grounds. The appeals stand dismissed."

9. This Court has also decided the similar issue in the case of The State of Bihar v. Srilal Yadav & Ors. reported in 2005 (3) JLJR 648. Paragraph no. 15 of the said judgment reads as under:

15. "In the instant case, as noticed above, petitioners joined the service in the erstwhile H.S. Ltd. where the age of superannuation was 58 years and the same was specifically mentioned in the letter of appointment. After the petitioners joined the services of the respondents their service conditions with regard to age was not altered. It is only in 1998 respondents MECON took decision raising age of superannuation of the employees form 58 years to 60 years but that decision was not given effect to as the decision was taken pursuant to Office memorandum issued by the Government of India. But subsequently taking into consideration financial condition of the Company, Government of India case with a proposal to roll back the age of retirement from 60 years to 58 years. After the decision of the Government, the matter was reviewed by the Board of Directors and it was decided to take up the matter with the Government to roll back the age of retirement from 60 years to 58 years. The Government after considering

the situation approved the decision and communicated it to the respondents. In such situation decisions relied upon by the petitioner are not applicable in the present case."

10. The law laid down in this regard is that the power of the employer, may be Government or Government Undertaking, to reduce or increase the age of superannuation is always there, unless this power is taken away by legislation. The employer has every right to alter the service conditions of the employee.

11. In view of the aforesaid settled proposition of law, the prayer of the petitioner for payment of retiral dues taking into consideration his date of retirement as 30.06.2006 (the date on which the petitioner attained 60 years) cannot be accepted and thus, the same is rejected.

12. Moreover, on perusal of various affidavits filed by the parties, it appears that there has been serious factual contest on the quantum and the mode of payment by the respondents to the petitioner. Thus, in my opinion, it would not be proper for this Court to adjudicate upon the said factual aspect in the present writ proceeding under Article 226 of the Constitution of India, particularly in view of the fact that the prayer of the petitioner in the present writ petition, is only with regard to the payment of retiral dues after enhancing the age of superannuation from 58 years to 60 years.

13. However, it is open to the petitioner to file appropriate representation before the respondent no.4 giving the complete details of the existing claims of the petitioner on which the respondent no. 4 shall take decision and pass appropriate order within a period of six weeks from the date of filing of such representation by the petitioner.

14. The writ petition stands disposed of.

