
(2002) 11 JH CK 0040
In the Jharkhand High Court
Case No : CWJC No. 2081 of 2001

Jageshwar Giri

APPELLANT

Vs

Chairman, Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79

Citation : (2002) 11 JH CK 0040

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Deepak Bharti, for the Appellant; I. Sen Choudhary and Ajit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioner was in the service of the respondent-Electricity Board. Earlier the petitioner was directed to be retire in 1995 which was challenged by him by filing a writ application being CWJC No. 1312/95R. The writ application was disposed of with a direction to the respondents to examine the petitioner by a Medical Board and after assessment of his age a decision be taken for his superannuation. Consequently the petitioner was examined by the Medical Board and his age was determined as 55 years on 22.1.1998 as according to the age assessment his date of birth was declared as 3.6.1943.

2. Petitioner's case is that as per report of the Medical Board he will superannuate with effect from 30.6.2003 after attaining the age of 60 years but in spite of that the respondents have sent a letter informing him that he will retire with effect from 26.9.2001. This communication is under challenge in this writ application. Petitioner's further case is that he will superannuate only after attaining the age of 60 years in 2003 and not prior to that.

3. Counter affidavit has been filed in which it is, inter alia, stated that the Bihar State Electricity Board issued a notification dated 9.9.1997 published in the

Gazette whereby it was decided that such workmen who have completed 42 years of service under the Board or have attained the age of 60 years, whichever is earlier, may be made to retire from the Board's service. It is contended that as per the service records of the petitioner he joined the services of the Board in 1959 and, as such, he completed 42 years of service on 26.5.2001. According to the respondents the petitioner as per the aforesaid notification has superannuated from service with effect from 26.5.2001.

4. Learned counsel for the petitioner has not disputed the fact that the petitioner joined the service of the Board in 1959 and thereby he completed 42 years of service in 2001. The contention of the learned counsel is that the retirement age of an employee of the Board is 60 years and, admittedly, the petitioner will attain the age of 60 years in 2003 and, therefore, he cannot be superannuated before attaining the age of 60 years. In this connection learned counsel put heavy reliance on a Division Bench decision of the Patna High Court in the case of Mokhtar Ahmad v. Bihar State Road Transport Corporation and Ors., reported in 1995 (1) PLJR 183.

5. In Mokhtar Ahmad's case (supra) the question which fell for consideration before the Division Bench was whether in absence of minimum age fixed by the employer, under the Bihar Service Code a person would retire from service on attaining the age of 58 years?. Their lordships considered the provisions of Rule 73 of the Bihar Service Code and observed as under : "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".

6. In the instant case the respondent-Board, by a statutory regulation issued u/s 79(c) of the Electricity (Supply) Act, 1948 published vide Notification dated 9.9.1997 specifically took a decision that an employee of the Board would retire after completing service of 42 years under the Board or after attaining the age of 60 years whichever is earlier (emphasis given is mine). It is, therefore, clear that in the Bihar Service Code there is no provision for retirement of an employee on attaining the age of 58 years or completing the service of 40 years whichever is earlier. On the contrary the age of retirement of the employee of the Board has been fixed by statutory regulation i.e. either attaining the age of 60 years or completing 42 years of service in the Board. In that view of the matter the decision relied upon by the petitioner is not at all applicable in the present case.

7. As noticed above, since the petitioner joined the services of the respondent-Board in 1959 and completed 42 years of service he has been rightly superannuated in 2001 as per the statutory regulation of the Board.

8. For the aforesaid reason I do not find any merit in this writ application which is, accordingly, dismissed.