

(2007) 02 PAT CK 0068

In the Patna High Court

Case No : CWJC No"s. 1930 of 2007 and 6983 of 2006

Jai Narayan Yadav

APPELLANT

Vs

The State of Bihar and Others
 Krishna Kumar Lall Vs
The Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 16, 17, 18, 19, 82
Constitution of India, 1950 — Article 266

Citation : (2007) 3 PLJR 705

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajendra Sharma in 1930 and 1097; Mr. Chakradhari Sharan Singh in 6983 and 7039; Mr. Satya Narayan Prasad in 8263 and 13613; Mr. Bamdeo Pandey in 9008, for the Appellant; Lalit Kishore, Binita Singh (in all); Mr. Rajiv Nayan Singh (in 13613) for the Housing Board G.P. 15 and G.P. 18 for the State, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. In these batch matters, the sole question for decision is whether the employees working under the Bihar State Housing Board would superannuate at the age of 60 years or at the age of 58 years. The question to be decided is whether the amendment which has been brought out by the State Government in Rule 73 of the Bihar Service Code making the age of retirement to be 60 years in the case of its employees is also applicable to the employees of the Housing Board or not?

2. By virtue of an ordinance issued in the year 1972 known as the Bihar State Housing Board Ordinance, the State of Bihar tried to shift the responsibility of Housing Department to the Housing Board, which was set up under the said ordinance. This 1972 ordinance came to be converted into an Act only in the year 1982. It took ten years for the respondent State to bring out a regular legislation to convert the 1972 ordinance into an Act. This Act is Act 57 of 1982. On the face

of it, it does look a little incongruous that an ordinance had taken almost ten years to be made into an Act. But then those were known as "Ordinance Raj Days". It was a normal feature to bring an ordinance, revalidate it for years together and may be finally given shape of a legislation after a long period of time. It is not very pertinent and relevant in the present case but this Court surely takes notice that only when a Professor of Economics, Prof. D.C. Wadhwa did research in the matter and wrote a book which was filed as a petition before the Supreme Court. Only after Hon"ble Supreme Court struck down such action to be unconstitutional that the Ordinance Raj era came to an end. This fact has been taken note of because it is a reflection on the ad hocism that was prevalent in legislative function in those days and has some bearing on the issue of the present case.

3. After coming of the ordinance and the creation of the entity known as the "Housing Board", the Board held its first meeting on 21.9.1972. It was resolved that until the Board frames its own Rules and Regulations laying down the service condition etc. for its employees the provisions of Bihar Service Code and other Rules would be applicable with respect to the employees who were working under the newly constituted body. One of the reasons could be the immediate need for rules to govern and the other since a lot of employees were placed under the jurisdiction of the Housing Board originally belonged to the State of Bihar and were working as such under the so-called Housing Department of the State of Bihar. This adoption of resolution was duly ratified by the State Government vide its letter dated 25.2.1976 under the so-called exercise of powers u/s 115(3) of the said Ordinance wrongly described as an Act in the affidavit of the Housing Board.

4. It is the case of the petitioners that thereafter the affairs of the Board continued to be governed in so far as it related to the service conditions by the said resolution. No doubt when the Act came into force in 1982 there were provisions in the Act contained in Section 17 as well as Section 19 which gave power to the Board to make its regulations. Since no regulation has ever been put into effect by the Housing Board till date the original resolution adopted by the Board in the year 1972 and approved as such by the State Government continues to occupy the field. The petitioners have brought evidence on record to demonstrate that in fact no regulation actually of any kind has ever been brought into effect at any stage. There are indications and reflections, however, that an exercise was carried out in this regard in the year 1987 but whether that exercise amounted to an action or a decision culminating into formulation of a regulation u/s 17 of the Act is seriously debated as well as questioned. This part of the matter shall be subsequently dealt with in later part of the order.

5. The background to the present conflict between the employees and the employer starts off with the decision of the State Government to amend Rule 73 of the Bihar Service Code. By virtue of a notification dated 24.3.2005, the State of Bihar increased the age of superannuation for its employees from 58 years to

60 years. After this change in the age of retirement was brought about the Housing Board in its wisdom keeping the background in mind that the Service Code of the State of Bihar was applicable to them also decided to notify the age of retirement for its employees to be 60 years. This was done vide a notification dated 30.4.2005. This notification increasing the age of retirement came to be ratified by the entire "Board" controlling the affairs of the Housing Board and the Board adopted the amendment vide its resolution dated 10.5.2005, the notification dated 30.4.2005 of increasing the age of retirement to 60 years. The matter thereafter was referred, as was the practice, to the Public Enterprises Bureau. The Chairman, Public Enterprises Bureau did not give any opinion on the issue except the fact that he advised the Housing Board to obtain the opinion of the Department of Personnel and Training. The matter, it seems thereafter travelled to the Department of Urban Development, Government of Bihar and the issue was examined by them. The Deputy Secretary, Department of Housing, Government of Bihar wrote a detailed letter No. 360 dated 17.6.2006 to the Housing Board. This letter has been made the basis by the Housing Board to annul its earlier order of increasing the age of retirement from 58 years to 60 years. The reasons are indicated in this letter and the background also has been discussed. What is important to note from this letter is that the Deputy Secretary has categorically recorded in this letter that though in the year 1987 a regulation of kinds was given shape to and the same was given approval also by the State Government vide its letter No. 1620 dated 10.7.1987 but the same was never notified or put into effect. He goes on to discuss as to why this regulation was not given effect to but there is a categorical assertion that this regulation never saw the light of the day. Further down the letter concludes as under:--

6. From what has been quoted above and a plain reading of the same, the Deputy Secretary directs the Housing Board to draw its regulation,

get it approved by the State Government and duly notify the same. So long as these steps were not taken by the Housing Board till then they are bound to follow the directions of the State Government. Exercising the powers u/s 17 of the Bihar State Housing Board Act, 1982 directions were issued to the Board to undo its decision of extending the age of retirement of its employees from 58 years to 60 years.

7. Soon after the receipt of this letter the Managing Director directed issuance of a notification dated 27.6.2006. This letter states that in view of the State Government's letter No. 360 dated 17.6.2006 the age of retirement of employees working under the Housing Board has been reduced to 58 years. The earlier notification dated 30.4.2005 stood annulled.

8. This notification of 27.6.2006 is thereafter ratified by the "Board" and the Board in its decision dated 3.11.2006 made the age of retirement of its employees to be 58 years.

9. Pursuant to the earlier decision of the Housing Board dated 30.4.2005, large

number of employees were allowed to continue in service treating their age of retirement to be 60 years, however, due to the intervention of the State Government this extended period was cut short by the Housing Board and some of these employees who were given extended service of two years were suddenly deprived of this benefit and made to retire. Quite a few of them are petitioners before me, who have been heard by me and are being disposed of by this common order.

10. Counter affidavit has been filed on behalf of the Housing Board as well as the State of Bihar. There is no dispute about the basic fact that when the Housing Board came into existence it did take a resolution which was duly approved and ratified by the State Government in the year 1976 that the Service Rules applicable to the employees of the State of Bihar shall also govern the employees of the Housing Board till they formulated their own Rules regulations in this regard. The Housing Board in its counter affidavit has taken a categorical stand that the Board had formulated its Rules and Regulations in the year 1987 and sent the same to the State Government. The State Government with condition and many suggested amendments and directions has approved the same and communicated its decision vide letter No. 1620 dated 10.7.1987. The counter affidavit further quotes Clause 75 of the said Service Regulations and states that the age of retirement for its employees according to the same said Regulation was fixed at 58 years though it gave the power to the Board in some exceptional circumstances and in case of certain particular category of employees to increase their age of retirement to 60 years. The contention of the Board, therefore, is that since a Regulation was already in its place, the decision of the Housing Board to increase the age of retirement based on the amendment made in Rule 73 of the Bihar Service Code was in violation of its own Rules and Regulations and, therefore, the State Government had all the authority to intervene and give a direction to the Housing Board to undo its decision of increasing the age of retirement of its employees from 58 years to 60 years.

11. The question to be decided by this Court now is to what is the Rule or Regulation which occupies the field and governs master-servant relationship in Bihar State Housing Board. If the Regulation of the Board is in place, then surely the petitioners have no case and the counsel for the Housing Board as well as the State, whose stand is common in this regard are correct. But what if it is found that there is no Regulation then what are the Rules which are available that shall govern the service conditions of the employees of the Housing Board?

12. It has already been taken note of above in this order that a resolution was taken that till such times the Housing Board created its own Regulations and put it into effect the Bihar Service Code and other related Rules would be applicable. Therefore, there has to be some kind of Rule or Regulation which has to be in place which shall govern or regulate the service conditions of these employees. There cannot be a vacuum.

13. this Court has been taken through a series of documents which have been

brought on record and it is being taken note of that these various communications or evidences which exist on the record is over an extended period of time. In fact after the so-called approval which was granted by the State Government to the Regulation in the year 1987 there are series of correspondences which indicate that in fact there was no regulation or even if there was one it was never ever put into effect. When you go through this document, you are surely made to sit up and take note that if there was a Regulation which was approved by the State Government in the year 1987 then how come time and again there are communications to indicate at the level of the Housing Board as well as at the level of the Government to show that there is no Regulation. Learned Counsel for the petitioner in C.W.J.C. No. 9008 of 2006 has brought to my notice a letter dated 8.8.1998. This is a letter of the Deputy Secretary, Building and Housing Department, Government of Bihar and has been addressed to the Secretary of the Housing Board. This letter makes an interesting reading because while it dealt with the issues of bringing out certain amendments in Sections 82, 16 and 18. It goes on to state that the Bihar State Housing Board was constituted in the year 1972, at that point of time a direction was given to formulate its own Rules and Regulations with regard to the service conditions of its employees. But till such times the Service Rules applicable to Government servants of the State of Bihar would be applicable. The letter expresses regret that despite such a long period of time had passed no Regulation has been given effect too. This letter is significant because it has been written more than 11 years after the so-called approval of the Regulation which according to the respondents, was given effect to in the year 1987. This letter is not in isolation, there are other evidences also on the record but it may not be necessary to be quoted or discussed at this stage.

14. In the counter affidavit which has been filed by the Housing Board, the Housing Board has brought on record a letter dated 6.6.2006. This is a communication by the Managing Director to the Chairman of Public Enterprises Bureau. The letter categorically states that since there is no Regulation which has been made by the Board, therefore, in terms of the original resolution of the State Government taken in the year 1976, the terms and conditions of the Bihar Service Code is applicable to the employees of the Housing Board. Keeping that in mind since the State Government has brought out an amendment in Rule 73, therefore, the Board also had extended the benefit to its employees increasing the age of retirement to 60 years. This letter has significance because it is coming at the level of the Chairman of the Housing Board. The Chairman of the Housing Board has categorically stated in this communication that there is no Regulation with regard to the service conditions of the employees of the Housing Board but then a feeble attempt was made on behalf of the respondents that this is the mischief which was sought to be created by the vested interest in the Housing Board. I would have readily accepted that submission but there are other indications also available to certify or corroborate the fact or the circumstances that there is no Regulation.

15. Let us refer to the communication of the Deputy Secretary of the Housing Department, which is Annexure-B and is dated 17.6.2006. this Court has already taken note of this communication in the earlier part of its order. In fact this Court has also quoted in extenso the communication which deals with this part of the matter. I can well appreciate that some vested interest might have tried to take advantage within the Housing Board to deny that there is no Regulation but how come the Government also feels so. If there is a Regulation which was approved by the Government in the year 1987 how come the Deputy Secretary himself states that this resolution was never put into effect and it issues categorical direction in the concluding part of the communication, which has been quoted above, that the Housing Board should form a Regulation at the earliest and notify the same. In other words the question whether there is a Regulation which was brought into effect in the year 1987 has not been conclusively established either by the Housing Board or the State of Bihar. The casual or ad hoc manner in which legislative action of the State was handled those days too could be a reason for non-formulation and notification of the Regulation in question.

16. this Court could have still been persuaded on this aspect of the matter whether there is a Regulation in this regard or not but in face of a judicial order recorded in the case of Giridhar Prasad Singh vs. State of Bihar, 2001 (1) PLJR 942, it is difficult to hold a contrary opinion. This was a case where an employee had to invoke the jurisdiction of this High Court under Article 266 of the Constitution of India for payment of retiral dues and this Court while examining the claim of the petitioner of that case records as under in paragraphs 3 and 4:--

"3. The State of Bihar constituted "Bihar State Housing Board" ("Housing Board" for short) by an Ordinance vide Govt. No. 3225 dated 7th March 72 with effect from 1st March 72. After creation of the Housing Board, complete assets, liabilities officers and employees of the Housing Department of the State of Bihar are transferred and placed under the Housing Board. Though the services of such employees including the petitioner were transferred under the Housing Board, no rule relating to service condition was framed, the State of Bihar vide Order No. 3725 dated 20th September 72 laid down the terms and conditions with regard to services of employees transferred under the Housing Board, including the petitioner, wherein it was stipulated that the Housing Board until finalises the service conditions of its employees, officers and staff, whose services have been placed at the disposal of the Board shall continue to enjoy under the Housing Board, the same service conditions in respect of pay, increment, leave, promotion, discipline and other fringe benefits as admissible under the State Govt. However, they were not allowed deputation allowance, though ii was made clear that their right to pensionary benefits shall continue.

4. Admittedly, the Housing Board subsequently had not framed any rules/regulations regarding service conditions of such transferred employees u/s of the Bihar State Housing Board Act. 1982 (emphasis mine). While, in service of the Housing Board, the petitioner was given promotion to higher post of Divisional

Accountant on 13th August '95 and ultimately, superannuated from the service of the Housing Board on 28th February 95. After retirement of petitioner, though the Respondents released the other retiral benefits, pension and gratuity were not released and in absence of such release of pension, the petitioner could not commute the same. For the said reason, the writ petition above was preferred.

17. This judgment has been taken note of because there was due representation in this case on behalf of the State and even as late as on 23.9.1999, the Court had taken a judicial notice that there was no Rules or Regulations of the Housing Board, which governed the service conditions of its employees. The order does not reflect that this position has been contradicted or the above finding recorded by the learned Single Judge came to be challenged before any superior forum. In fact the Court also records a similar circumstance in the case of Smt. Shibrani Devi vs. State of Bihar and Ors. (unreported) in C.W.J.C. No. 4302/94 dated 20th March 1997. The Court directed payment of retiral dues to those petitioners keeping in mind that the employees were governed by the Bihar Service Code and not by any Regulation.

18. When there are so many evidences as well as judicial findings in this regard, it is very difficult for this Court to accept the stand taken by the Housing Board and reinforced by the State Government that in view of Regulation of 1987 the decision of the Housing Board to extend the age of retirement due to an amendment in Rule 73 of the Bihar Service Code was arbitrary and illegal. There are clear evidence to establish that there is no Regulation in place or in operation in Housing Board.

19. Since the Housing Board had to undo its earlier decision of extending the age of retirement on the dictates of the State Government which is evident from the letter dated 17.6.2006 and is also borne out by the notification dated 27.6.2006 the Court has no option but to interfere. The direction issued to the Board for the reasons indicated in the communication of the Deputy Secretary is misplaced and unfounded. No doubt the State Government has the requisite authority to issue directions to the Housing Board under the statute but the reason which has been given for issuance of the present directions to reduce the age of retirement from 60 to 58 years is on extraneous considerations and, therefore, fit to be interfered with.

20. On failure on the part of the Housing Board as well as the State Government to establish that there is a Regulation which governs the service conditions of the employees of the Housing Board the natural corollary is that the final resolution of the year 1976 about applicability of the Bihar Service Code to the employees of the Housing Board still continues to occupy the field. If that is the position then the Housing Board committed no wrong in increasing the age of retirement from 58 years to 60 years. this Court, therefore, has no option but to quash the direction contained in letter No. 360 dated 17.6.2006 of the Deputy Secretary, Housing Department, Government of Bihar which is Annexure-7 and consequently, the notification dated 27.6.2006 as well as the decision of the

Board dated 3.11.2006, by virtue of which the age of retirement of the employees of the Housing Board have been reduced to 58 years is also quashed. The employees of the Housing Board shall continue to render service till the age of 60 years unless and until the Housing Board in its wisdom decides to formulate its regulation and enforce the same.

21. this Court has already taken note that some employees of the Housing Board were forced to retire at an early age because of the intervention of the State Government. By virtue of this order, all those employees, who were superannuated because of the intervention of the State Government shall be put back in service and they will be treated as having continued in service without any break whatsoever. They shall be entitled to all remunerations as if they were in continuous service of the Housing Board till they reach the age of superannuation i.e. 60 years. All these writ applications are accordingly allowed with the above observations and directions.