

(2001) 11 PAT CK 0045
In the Patna High Court
Case No : C.W.J.C. No. 12495 of 2001

Md. Musa Ansari	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 42
Bihar Service Code, 1952 — Rule 73
Municipal Officers and Servants (Appointment, Duties, Discipline and Appeal) Rules — Rule 4

Citation : (2002) 4 PLJR 121

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The Petitioner was appointed in Madhubani Municipality on 14.9.1961 on class IV post. He was promoted to the post of Head Clerk-cum-Accountant in 1973. According to the Petitioner his date of birth was 15.1.1945 and as such he would complete 58 years on 31.1.2003. However, vide letter dated 13.9.2001, Annexure-8 issued by the Special Officer, Madhubani Municipality, he was made to retire with effect from 30.9.2001 i.e. on completion of 40 years of service in view of Government decision/ circular dated 28.5.1990, Annexure-3. The Petitioner has challenged the order, Annexure-8, in this writ petition on the ground that it is violative of the Statutory provision i.e. Rule 73 of Bihar Service Code.

2. It is an admitted position that Bihar Service Code has been made applicable to the employees of the Municipality with effect from 25.6.1977. The aforesaid fact has been admitted in para 16 of the writ petition and is also evident from Annexure-9. Therefore, Rule 73 of Bihar Service Code is applicable to the employees of the Municipality. Rule 73 provides that employee of the Government would superannuate on attaining the age of 58 years. When the Petitioner was appointed Bihar and Orissa Municipal Act was in force. Section 42

of the Bihar and Orissa Municipal Act provides power to the State Government to make Rules in respect of creation of post, duties, qualification and procedure for appointment, transfer, leave, disciplinary action and removal of officer and servant of the Municipality. Under the aforesaid provision, Municipal Officers and servants (appointment, duties, discipline and appeal) Rules was framed. Rule 4(b) says that "no officer or servant of the commissioners shall be appointed unless he is above 18 years and below 25 years of age on the date of appointment." Therefore, it is manifest from the aforesaid provision that on the date of entry in the service the person must be 18 years of age but according to the Petitioner his age as per his service book at the time of appointment was about 16 years 8 months. According to the Petitioner even though he was less than 18 years of age at the time of appointment, now he cannot be made to retire before completion of 58 years of age. According to the Petitioner statutory right cannot be taken away by executive instruction. It is true that Rule 73 of Bihar Service Code provides that an employee shall superannuate on completion of 58 years of age and such statutory right of the employee cannot be taken away by executive instruction. From the Rule with respect to the appointment as quoted above, it is evident that no person shall be entitled to appointment unless he attains the minimum age of 18 years. If any appointment below the age of 18 years is made then it shall be deemed that a minor has been appointed and employer may be penalized under the Child Labour (Prohibition and Regulation) Act, 1986. Therefore, the person who got himself employed violating statutory Rule, cannot claim right under statute. More-over, it is evident from Annexure-3, the Government decisions/Circular that direction has been issued, considering the fact that in the Corporation/Local Bodies, service books are not being maintained properly, that on completion of 40 years of service the employee should be made to retire. The minimum age for entering in the service is 18 years. If a person is appointed at the age of 18 years he would complete 58 years of age on completion of 40 years of service. Therefore, in no way the decision, Annexure-3, can be said to be arbitrary or violative of any statutory provision. Therefore, the order, Annexure-8, whereby the Petitioner has been made to retire with effect from 31.1.2001 on completion of 40 years of service, in my opinion, does not suffer from any irregularity/ illegality. More-over, the question involved in the case was also considered in C.W.J.C. No. 553/94 (R). The said writ petition was dismissed by a bench of this Court. In the said case decision in the case of Mokhtar Ahmad v. Bihar State Road Transport Corporation and Ors. 1995 (1) P.L.J.R. 183 was also considered and distinguished. Against the said judgment, L.P.A. No. 91/95 (R) was preferred but the said L.P.A. was dismissed on 13.12.1995.

3. Therefore, on consideration as discussed above, I do not find any irregularity/ illegality in the order, Annexure-8, on the basis of which the Petitioner was made to superannuate on completion of 40 years of service. The writ petition is, therefore, dismissed but without cost.