

(1990) 10 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 3611 of 1990

Mohd. Ali and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (1991) 1 BLJR 111 : (1991) 1 PLJR 327

Hon'ble Judges : Sachchidanand Jha, J;N.P. Singh, J

Bench : Division Bench

Judgement

Nagendra Prasad Singh and Sachchidanand Jha, JJ.—This writ application has been filed on behalf of the petitioners for a direction to the Managing Director of the Bihar State Handloom Weavers' Co-operative Union (hereinafter referred to as "the Handloom Union") not to retire the petitioners from the service of the said Handloom Union, after having attained the age of 58 years.

2. According to the petitioners, no rule or regulation has been framed by the Handloom Union fixing the age of superannuation of its employees and, as such, it cannot retire its employees on attaining the age of 58 years because at that age the State Government and other corporations and authorities within the meaning of Article 12 of the Constitution are retiring their employees. In this connection reliance was placed on a judgment of the Supreme Court in the case of Miss Raj Soni Vs. Air Officer in Charge Administration and another, , where it was pointed out that every institution must frame and follow a uniform rule for superannuating its employees. In that connection it was observed:

The age of superannuation cannot be left to the whims of the employer to enable him to retire different employees at different ages.

3. The Bihar Co-operative Societies Act, 1935 (hereinafter referred to as, "the Act") and the rules framed thereunder contain provisions regarding the functioning of different co-operative societies. Recently amendments have been

introduced in several sections of the said Act vesting power in the State Government to issue directions from time to time by special or general order in discharge of the functions by the said co-operative societies including in respect of appointments of its employees and condition of their service. Section 66-B of the Act is as follows:

66-B. (1) Notwithstanding anything contained in this Act or the rules and bye-laws made thereunder, the State Government may, from time to time, by special or general order, determine the nature and number of posts to be created and the mode of recruitment of personnel by co-operative societies and prescribe among other things-

- (1) the qualifications, age and experience,
- (2) the pay scale and other emoluments,
- (3) the method of recruitment,
- (4) the conditions of service, and
- (5) the disciplinary procedure to be followed:

(2) Any appointment made in contravention of the order of the State Government under Sub-section (1) shall be void as if no such appointment ever existed and salary and other allowances paid if any, shall be recoverable u/s 40.

In this connection Rule 33 of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as "the Rules") is as follows:

33. Appointment of paid employees,--(1) The appointment of a paid employee in any registered society shall be subject to such conditions as to qualifications, designation, scale of pay and travelling allowance, furnishing of security, compulsory contribution to provident fund, grant of leave, salary increment, transfer, punishment, suspension, removal or dismissal as may from time to time be determined by the Registrar by general or special order.

(2) A registered society aggrieved by any order of the Registrar under, Sub-rule (1) may within sixty days of the receipt of such order, prefer an appeal against the order to the State Government and the decision of the State Government thereon shall be final.

(3) Any appointment made hereinafter in contravention of the conditions determined by the Registrar under Sub-rule (1) shall be void as if no such appointment ever existed and salary and other allowances paid, if any, to such persons, shall be recoverable u/s 40 of the Act.

In view of Section 66-B of the Act the State Government may from time to time by special or general order prescribe among other things the conditions of service of the employees of the different Co-operative Societies. Similarly, the Registrar, Co-operative Societies, by general or special order issue directions in respect of appointments of employees" in a registered society.

4. The petitioners themselves have enclosed an order of the Registrar, Co-operative Societies, dated 21.10.1981, in respect of this very Handloom Union's where a dispute had been raised by one of the employees before the Registrar as to whether he shall retire after attaining the age of 58 years. The then Registrar, Co-operative Societies, after hearing the petitioner of that application and the present Handloom Union, rejected the said claim after making reference under Rule 33 of the Rules and to a decision said to have been taken by the Social Officer to retire the employees of the said Handloom Union at the age of 58 years, which according to the opinion of the Registrar in that order, was a reasonable age for retirement. The Registrar further said in that order as follows:

So far as continuance of other employees in the Handloom Union, after they have attained the age of 58 years, is concerned, this has been denied in Para 9 of the show cause petition on behalf of the Handloom Union. The Union has mentioned the name of persons who have been retired and have already made over charge in Para 9 of its show cause petition. Undoubtedly the Handloom Union should apply the same criteria in respect of all its employees and should not make a discrimination between one employee and another.

5. In our opinion, the aforesaid directions given to the Handloom Union, in which these petitioners are employees by the Registrar in the aforesaid order shall amount to an order under Rule 33 of the Rules. In other words, the Registrar while disposing of the application filed by one of the employees of the Handloom Union has passed a general order so far this Handloom Union is concerned, to follow the uniform practice of retiring its employees at the age of 58 years and not to make any discrimination between one employee and another on that count. As the direction given by the Registrar in the order aforesaid is within the scope of Rule 33 of the Rules and a reasonable one conforming to the requirements of Article 14 of the Constitution, we do not find any reason to interfere with the decision of the respondent Handloom Union in retiring these petitioners after having attained the age of 58 years because any such direction will amount to directing the Handloom Union to make discrimination amongst its employees so far the age of superannuation is concerned.

6. Accordingly, we direct that the aforesaid direction of the Registrar to follow a uniform practice to superannuate the employees after attaining the age 58 years should be strictly and scrupulously followed by the Handloom Union so that no employee can make any grievance that he has discriminated in the matter of superannuation.

7. Before we part with this order we may mention that on behalf of the petitioners our attention had been drawn to the last part of the aforesaid order dated 21.10.1981 passed by the Registrar in which the Registrar has directed the Handloom Union to get a Staff Regulation formally approved by him in this connection. In our opinion, once that order is held to be an order under Rule 33 of the Rules and, as such, binding on the Handloom Union, it cannot be urged that till such Staff Regulations are framed and formally approved by the

Registrar, the employees of the said Handloom Union shall continue in service for an indefinite period even after they have attained the age of 58 years.

8. This writ application is, accordingly, disposed of at the stage of admission itself.