
(2010) 02 PAT CK 0016
In the Patna High Court

Nagendra Lal, Awadhesh Kumar Giri and Birendra Kumar
Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Citation : (2010) 02 PAT CK 0016

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the petitioners and the counsel for the BISCOMAUN, who at the outset questioned the maintainability of this writ application, as according to him, BISCOMAUN being not a State within the meaning of Article 12 of the Constitution of India this Court should not entertain the writ petition.

2. I regret not to accept the submission as petitioners have filed this writ application to direct the Managing Director, BISCOMAUN to grant them the benefit of the orders passed by the Administrator, BISCOMAUN bearing Memo No. 868 dated 30.7.2009, Annexure-8, whereunder the age of superannuation of the employees of BISCOMAUN has been extended from 58 years to 60 years. In the circumstances, the writ petition praying inter alia to direct the Managing Director to abide by the orders of the Administrator dated 30.7.2009, Annexure-8 is maintainable as the Administrator of BISCOMAUN is the authority appointed by the State.

3. Prior to issue of the order dated 30.07.2009, Annexure-8 petitioners were served with the order of the Managing Director dated 5/4.5.2009 as contained in Annexures 1, 2 and 3 whereunder they were directed to superannuate with effect from 30.6.2009 on attaining the age of 58 years contrary to the resolution of the Board of Directors of the BISCOMAUN taken in its meeting held on 02.11.2007, whereunder the age of retirement of the employees was extended from 58 years to 60 years.

4. Petitioners questioned the aforesaid order directing them to retire by filing representation dated 26.6.2009 addressed to the Managing Director of BISCOMAUN, contained in Annexure-7 series. In compliance of the orders dated 22.06.2009 passed in C.W.J.C. No. 5387 of 2009, Annexure 6, Administrator, BISCOMAUN directed Managing Director to issue order bearing Memo No. 868 dated 30.7.2009, Annexure-8 extending the retirement age of the employees of BISCOMAUN from 58 years to 60 years with immediate effect. This Court under orders dated 17.9.2009 passed in C.W.J.C. No. 14312 of 2008, Annexure-10 observed that the benefit of the resolution of the Board dated 2.11.2007 and order dated 30.7.2009 shall be allowed to the petitioners of the said case also as they had approached the Court before their retirement. Later, under orders dated 18.9.2009 passed in C.W.J.C. No. 10744 of 2009, Annexure-11 the Court again reiterated that the petitioners shall be allowed the benefit of the extended retirement age. The representation of the petitioners against the order retiring them at the age of 58 years was filed before the actual date of retirement of the petitioners on 22.6.2009. BISCOMAUN authorities in paragraph 9 of the counter affidavit filed in C.W.J.C. No. 10744 of 2009 admitted that representation of the petitioners for grant of extended retirement age was pending.

5. Counsel for the petitioners submitted that although petitioners have filed this writ petition for grant of extended retirement age on 12.01.2010 but their representation for the same relief remained pending from 26.6.2009 i.e. prior to their retirement and in consideration of the said fact petitioners should be allowed the consequential benefit of salary etc. with effect from the date of retirement i.e. 30.6.2009.

6. Aforesaid submission is being refuted by the counsel for BISCOMAUN with reference to the judgment of the Hon'ble Supreme Court in the case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, . It is submitted by the learned Counsel for the BISCOMAUN that petitioners may have filed representation dated 26.06.2009 but the same stood rejected in view of the direction of the Administrator contained in the order dated 30.7.2009, Annexure-8 whereunder the benefit of the extended retirement age was made available with effect from 30.07.2009 and in the light of the said order petitioners should have approached this Court soon after the issue of the order dated 30.07.2009 and not six months thereafter and as the petitioners have not rendered any service to BISCOMAUN from 30.6.2009 till date, they should not be allowed salary for that period.

7. Having heard counsel for the petitioners and the BISCOMAUN and having perused the earlier orders of this Court, I am of the view that benefit of the extended retirement age is to be allowed to the petitioners as they had made representation dated 26.6.2009 for such grant of extended retirement age in the light of the resolution of the Board of Directors dated 2.11.2007 before the date of their retirement i.e. 30.6.2009. The submission that the representation of the petitioners dated 26.6.2009 stood rejected in the light of the order dated

30.07.2009 is concerned, the same has been noticed only for being rejected as if the authorities were not inclined to accept the representation of the petitioners, they should have passed order rejecting the representation but as the authorities have not chosen to pass specific order rejecting the representation, in my opinion, the authorities cannot deprive the petitioners the benefit of the salary for the period 30.6.2009 till the date of joining by the petitioners in the light of this order. Accordingly, I direct the BISCOMAUN authorities to grant the petitioners benefit of the extended age of retirement until attaining the age of 60 years as also to pay them arrears of salary for the period between 30.6.2009 till date of joining and thereafter until they attain the age of 60 years.

8. The writ petition is, accordingly, allowed.