
(2006) 04 JH CK 0051

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 358 of 2005

Nemdhari Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72(2)
Bihar Service Code, 1952 — Rule 73

Citation : (2006) 2 JCR 455

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : A. Allam and N. Sharmin, J. Rahman, J.C. to G.P. II, Rajiv Ranjan and Abhay Kumar Mishra, for the Appellant; J.P. Gupta, A.S.G., for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The appellant was appointed on 1st July, 1976 under the State of Bihar and was posted as Group Officer, Special Branch, Chaibasa (within the territory of Jharkhand) since 10th May, 1997. After reorganisation of the State, he continued to hold the said post under the State of Jharkhand.

2. The age of superannuation was 58 years for employees of State of Bihar prescribed under Rule 73 of the Bihar Service Code, 1952. The said Code was adopted by the State of Jharkhand by Notification No. 3/M-7-0/2001-3821/Ranchi dated 19th October, 2001 and was subsequently amended by Resolution No. 7/BBP-56/2002-Ka-5826/Ranchi dated 26th October, 2004. Age of superannuation was enhanced from 58 to 60 years. On the other hand, it continued to be 58 years in the successor State of Bihar till successor State of Bihar amended Rule 73 and enhanced the age of superannuation from 58 years to 60 years by Resolution No. 3A-7-Maha-01/2005-1500 B(2) dated 23rd March, 2005.

3. The date of birth of appellant being 2nd February, 1947, as per old Rule 73, he

was to continue upto 58 years of age he. upto 28th February, 2005 but, in the meantime, age of superannuation was enhanced from 58 years to 60 years by the State of Jharkhand.

4. An Advisory Committee recommended the name of appellant for allocation of his service under the State of Bihar along with some others. In the State of Bihar, the age of superannuation being 58 years, appellant challenged the recommendation of the Advisory Committee by filing a writ petition, being W.P. (S) No, 1318 of 2005. During the pendency of the said writ petition, the Central Government issued order No. 3(Jha)/2005 dated 17th February, 2005 u/s 72(2) of the Bihar Reorganisation Act, 2000 and allocated his service under the State of Bihar. The appellant challenged the said order in the writ petition by filing a petition for amendment (LA. No. 800 of 2005).

The case was taken up by learned Single Judge on 29th March, 2005 and the same was dismissed on the ground that the appellant had retired from service on 28th February, 2005 on attaining the age of 58 years. The issue whether appellant was entitled to continue upto 60 years of age or not was not determined by the learned Single Judge.

5. It came to the notice of the Central Government that while the State Advisory Committee, Bihar was in the process of allocation of the State Service Personnel between the successor States, in the meantime, Government of Jharkhand raised the age of superannuation from 58 to 60 years, vide Notification dated 26th October, 2004, whereas the Government of Bihar has raised the age of superannuation for its employees vide its Notification dated 23rd March, 2005. What will be the position of the employees, in the meantime, if finally allocated to the other successor State, fell for consideration before the Central Government. By its letter No. 28/43/2004-SRS dated 29th March, 2005, the Central Government issued the following guidelines:

No. 28/43/2004-SRS

Government of India

Ministry of Personnel, P.G. and Pensions

Department of Personnel and Training

Lok Nayak Bhawan, Khan Market, New Delhi, the 29th March, 2005

To

The Chief Secretary Government of Bihar,

The Chief Secretary, Government of Jharkhand, Ranchi.

The State Advisory Committee, Bihar is in the process of allocation of State Service Personnel between the successor States of Bihar/Jharkhand. In the

meantime, Government of Jharkhand has raised the age of superannuation from 58 to 60 years vide their notification dated 26.10.2004 whereas the Govt. of Bihar has raised the age of superannuation for its employees vide its notification on 24.3.2005.

Keeping in view the overall situation, the matter has been examined and the undersigned is directed to advise that-

(a) those personnel who are posted in the State of Jharkhand and have attained the age of 58 years between 26.10.2004 and 23.3.2005 have been allocated to the State of Bihar, will be treated as superannuated on the day of attaining the age of 58 years and they will get their pensionary/retiral benefits from the successor State of Bihar.

(b) those personnel who are posted in Bihar and have attained the age of 58 years on or after 26.10.2004 and have retired but allocated to the successor State of Jharkhand will resume their duty/post in the State of Jharkhand and they will get salary from State of Jharkhand w.e.f. the date of assuming the charge and their service will be counted in continuity for the purpose of pensionary/retiral benefits but they will not get any salary for the period for which they have not worked due to their retirement in the State of Bihar; and

(c) all those personnel who have completed 58 years of age on or after 26.10.2004 may be provisionally relieved to the respective successor State as recommended in the Revised Final Allocation List pending their final allocation by the Central Government if no representation has been received against their proposed allocation;

It is requested that the action taken in the matter may kindly be intimated to the Central Government immediately.

Yours faithfully, Sd/(A.K. Srivastava) Desk Officer

Copy to the Chairman, State Advisory Committee, Sichai Awas, 21 Beli Road, Patna for information and necessary action with reference to their letter No. Ra.Pa.Sa. 16/2004/106 dated 25.2.2005.

6. Similar issue fell for consideration before a Division Bench of this Court in *Madheshwar Dhari Singh and Anr. v. Union of India and Ors.* W.P. (S) No. 4716 of 2005 : 2006 (2) JCR (Jhr), which was allowed by judgment dated 23rd March, 2006. This Court, having noticed the guidelines dated 29th March, 2005, issued by the Central Government, held clause (a) of paragraph "2" of the said guidelines as ultra vires and directed the respondents not to give effect to clause (a) of paragraph "2" thereof. The petitioners of the said case were allowed to continue in services of the State of Bihar upto the age of 60 years.

7. The case of the appellant being covered by the said unreported decision of by this Court in the case of *Madheshwar Dhari Singh*, (supra), the impugned order passed by the learned Single Judge dated 29th March, 2005, in W.P. (S) No.

1318 of 2005, being against the decision of Division Bench aforesaid is not sustainable and is hereby set aside. The respondents are directed not to give effect to clause (a) of paragraph "2" to the guidelines dated 29th March, 2005 in the case of the appellant and to allow him to continue in the services of the State of Bihar till he attains the age of 60 years. The State of Bihar is also directed to issue appropriate notification of posting of the petitioner, if not yet issued, with further direction to pay him full salary of the intervening period during which he was forced to remain out of service.

8. Both the writ petition and the appeal are allowed with the aforesaid observations and directions. However, there shall be no order, as to costs.

Narendra Nath Tiwari, J.

9. I agree.