
(2002) 02 JH CK 0127

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5135 of 2002

Pranadhar Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Bihar Service Code, 1952 — Rule 54

Citation : (2003) 2 JCR 572

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Binod Kumar Dubey and M.L. Yadav, for the Appellant; Ashutosh Choubey, JC to GP-II, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by petitioner against the order dated 15th June, 2002 whereby respondents have ordered to deduct a sum of Rs. 58,712/- (fifty eight thousands seven hundred twelve only) from his leave salary.

2. The petitioner, a Draftsman Grade II of Road Division, Chatra was informed by the Executive Engineer, Road Construction Department, Road Division, Chatra vide memo No. 1313 dated 24th December, 2001 that on completion of 40 years of service in the light of decision of High Court he stands retired w.e.f. 24th December, 2001.

3. The petitioner opposed the decision and brought to the notice of the authority that the age of superannuation is 58 years which he will complete on 31st July, 2002.

4. Aforesaid stand was not accepted by the respondents who ordered to recover a sum of Rs. 58,712/- (fifty eight thousands seven hundred twelve only) from the leave encashment on the ground that the petitioner worked beyond the period of 40 years of service and received salary.

5. Admittedly, 58 years is the age of superannuation as per Rule 73 of the Bihar Service Code, 1952. No Rule has been framed by the State to superannuate a Government employee on completion of 40 years of service.

6. On similar ground some other persons were also superannuated on completion of 40 years of service but when the matter was brought to the notice of the Personal Administrative and Reforms Department, State of Bihar, the Deputy Secretary vide his letter No. 5670 dated 23rd June, 1997 informed the Collector, Bhojpur, Arrah that the age of superannuation is 58 years and not 40 years of service.

7. Similar matter fell for consideration before the Division Bench of Patna High Court in "Mokhtar Ahmad v. The Bihar State Road Transport Corporation", 1995 (1) PLJR 183. In the said case also the petitioner was retired on completion of 40 years of service. The Court taking into consideration the fact that there was no lower age limit was fixed under Rule 54 for appointment in pensionable service and that the Rule 73 envisages that a Government servant would retire only on attaining 58 years of age held that a Government Servant cannot be retired by arbitrary pushing back his date of birth ; assigning him an imaginary date of birth on the ground of completion of 40 years of service.

8. Similar was the view of this Court in Mantu v. Central Coalfield Limited, reported in 2002 (2) JLJR 407.

9. There is nothing on the record to suggest that any minimum age limit was prescribed while the petitioner was appointed in Govt. service in the year 1961. The Rule 54 of the Bihar Service Code also do not prescribe any minimum age for appointment. In this background, even if the petitioner was appointed prior to 18 years of age, the respondents cannot push back his age of retirement which is fixed under Rule 73 of the Bihar Service Code, 1952,

10. For the reason aforesaid, the order contained in memo No. 1313 dated 24th December, 2002 issued by the Executive Engineer, Road Construction Department, Road Division, Chatra being illegal is set aside. The petitioner will be deemed to have continued in the service of the State till he had attained the age of 58 years. The order of recovery dated 15th June, 2002 is also set aside. The respondents are directed to pay the petitioner arrears of salary for the period he was forced to remain out of service till the date he attained the age of 58 years, fix his retiral benefits like pension, gratuity, leave encashment etc. on the basis of the date he attained age of 58 years and pay the admitted arrears and other benefits within a period of three months from the date of receipt/production of a copy of this order.

11. The writ petition is allowed with aforesaid observations and directions.