

(2023) 12 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18439 Of 2015

Raghubir Prasad

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 08-12-2023

Acts Referred:

Citation : (2023) 12 PAT CK 0024

Hon'ble Judges : Rajesh Kumar Verma, J

Bench : Single Bench

Advocate : Binodanand Mishra, Kinkar Kumar, Ashutosh Kumar Upadhyaya

Final Decision : Dismissed

Judgement

1. Heard Mr. Binodanand Mishra, learned counsel for the petitioners and Mr. Kinkar Kumar, learned standing counsel no. 9 assisted by Mr. Ashutosh Kumar Upadhyaya, learned AC to SC 9.

2. This writ petition has been heard in detail at the stage of admission itself and is being disposed of finally with consent of the parties.

3. The present writ petition has been filed by the petitioners for direction commanding the respondents to allow the petitioners to continue in service till the age of 60 years and pay all the consequential benefits as they are entitled in accordance with law.

4. The petitioners were enrolled as Home Guard on different dates which are mentioned as follows:-

S.No.

Petitioners

Date of Enrollment

1

Raghubir Prasad

07.09.1976

2

Raj Narayan Tiwari

07.09.1976

3

Yogendra Kumar Pandey

07.09.1976

4

Manager Mishra

07.09.1976

5

Gena Harijan

07.09.1976

6

Byas Chaudhary

21.11.1976

7

Lutawan Rawat

02.01.1977

8

Phulmaan Miyan

02.01.1977

9

Sudama Singh

21.11.1976

10

Tribhuwan Mishra

07.09.1976

11

Munni Lal Bhagat

07.09.1976

12

Laxmi Kant Yadav

10.09.1976

13

Bagesh Pandey

21.11.1976

14

Manager Yadav

21.11.1976

15

Babulal Ram

07.09.1976

16

Hasmat Ansari

07.09.1976

17

Rama Prasad Yadav

07.09.1976

18

Devnath Rawat

07.10.1979

19

Swaminath Upadhyay

10.09.1976

20

Hadish Miyan

10.09.1976

21

Ramadhar Sah

07.09.1976

22

Lal Babu Manjhi

21.11.1976

23

Alagu Sah

10.09.1976

24

Paramhansh Chaubey

07.10.1979

25

Dinanath Ram

04.11.1980

26

Ram Bachan Yadav

01.07.1977

27

Saheb Prasad Bhagat

07.09.1976

28

Ramdas Bhagat

07.09.1979

29

Surtanand Ram

07.19.1976

30

Nathu Ram

07.09.1976

31

Sri Kishun Prasad

07.09.1976

32

Rudal Yadav

07.09.1976

33

Tufani Ram

21.11.1976

34

Rajendra Baitha

02.01.1977

35

Babu Lal Ram

07.09.1976

36

Uma Nath Rawat

07.09.1976

37

Nandlal Ram

07.09.1976

38

Banka Singh

21.11.1976

39

Lalan Pandit

07.09.1976

40

Harendra Singh

07.09.1976

41

Prabhunath Sah

21.11.1976

42

Khelari Kumhar

07.10.1976

43

Rajbali Sah

07.09.1976

44

Ram Ashish Mishra

01.01.1977

45

Ram Lakhan Singh

07.10.1979

46

Devdhari Mahto

07.09.1976

47

Sakal Dev Singh

07.09.1976

48

Ramayan Chaudhary

21.11.976

49

Rojid Ansari

07.09.1976

50

Ramashish Prasad

21.11.1976

51

Suryaman Bhagat

21.11.1976

52

Gauri Shankar Prasad

02.01.1977

53

Rama Kant Prasad

10.09.1976

54

Ram Prawesh Ram

07.09.1976

5. Thereafter, they have completed their training and were discharging the duties of Home Guards to the satisfaction of all concerned.

6. The State Government had issued a Resolution No. 37 of 2015 issued by Special Secretary, Department of Home where duty allowance and other benefits of the Home Guards have been enhanced. In the said resolution it has also been provided that the age limit for continuity of service as a Home Guard has been increased from 58 years to 60 years w.e.f 01.04.2015. It has further been provided that on attaining 60 years of age, the enrollment of the Home Guards would automatically come to an end. He further submits that the petitioners were enrolled on different dates on or after 07.09.1976 and on the date of enrollment their age has been said to be 19 years, as such they would attain the age of 58 years on or after 07.9.2015. In the meanwhile, the Government has taken decision with respect to enhancement of age of superannuation to 60 years w.e.f 01.04.2015 and as such the petitioners were entitled to continue as Home Guards till September, 2017. But the respondent authority debar the petitioners to continue Home Guard w.e.f 31.12.2014.

7. Learned counsel for the petitioner has relied upon the judgment / order dated 11.10.2010 passed in C.W.J.C No. 2507 of 2006 where the petitioners of the aforesaid case were validly selected for appointment on the post of Constable under Bihar Military Police and the respondent authority have illegally and arbitrarily discontinued their engagement w.e.f 31.12.2014.

8. Learned counsel for the petitioner submits that in view of the aforesaid judgments, the petitioners are entitled to continue to be enrolled as Home Guards up to the age of 60 years and they are entitled to be extended the enhancement of age and other benefits as per the resolution of the Department of Home dated 03.07.2015 and 14.07.2015.

9. Learned counsel for the State submits that the date of coming into effect of the said Regulation is wrongly mentioned as 01.04.2014 in place of 01.04.2015. The date of birth of some of the Home Guards were found to be not matching with the date of birth as given in their Matriculation certificate and at the time of engagement of these home guards they were found to be less than 19 years of age, if their matriculation certificate were taken as evidence of age. In the circumstances some of the home guards came before this Hon'ble Court when they were denied appointment as Constables in Bihar Military Police on the ground of variance in their date of birth in the training certificate and the matriculation certificate. The Hon'ble Court in C.W.J.C No. 2507 of 2006 vide order dated 11.10.2010 directed the DG of the Home Guard to look into the matter and to communicate the outcome of the petitioners of that case. In compliance of the aforesaid order dated 11.10.2010 passed in C.W.J.C No. 2507 of 2006, the DG of Home Guard, Bihar, Patna vide memo no. 207 dated 19.01.2012 came out with an order treating the date of birth of the home guards to be the date given by them at the time of registration. It was further decided that as per Clause 4 (A) of the Home Guard Rules, 1953, the candidate shall be treated to be of 19 years of age in such cases on the first day of January of that year of registration. In view of the said order any home guard attaining the age of 58 years in a given year shall be treated to have attained that age on the 1st day of January of that year and thus his engagement comes to an end on the first day of January of that year he attains 58 years. In view of the aforesaid resolution, the engagement of the petitioners were automatically come to an end on the first day of January of the year they attain 58 years of age. Any home guard who according to their entry at the time of registration attained 58 years of age as per the aforesaid order dated 10.01.2012 before coming into force of the resolution as their engagement came to an end on the first day of January itself.

10. Learned counsel for the State further relied upon the judgment of the Hon'ble Apex Court reported in 2023 LiveLaw (SC) 708. Referring to the paragraph 17 which is as follows;

17. Such a decision lies exclusively within the domain of the Executive. It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not. It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age. As for the aspect of retrospectivity of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the decision bad: nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide. The appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from

G.O. dated 9th April, 2012, on the ground of legitimate expectation.

11. And in the present case the petitioners were disengaged from service after attaining the age of 58 years w.e.f 31.12.2014 so the petitioners cannot claim for benefit of the resolution dated 01.04.2015 that has come after the disengagement of the petitioners.

12. In view of the aforesaid, the claim of the petitioners cannot be sustain and the writ petition stands dismissed.