

(2005) 12 PAT CK 0051

In the Patna High Court

Case No : CWJC No's. 3929 and 4114 of 2004

Ragjawa Narayan Mishra

APPELLANT

Vs

Chief Executive Officer, Bihar Rajya Khadi Gramoudyog Board
and Others
 Indradeo Prasad Vs State of Bihar and
Others

RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:

Bihar Pension Rules, 1950 — Rule 57
Bihar Service Code, 1952 — Rule 73
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 11
Liberalised Pension Rules, 1950 — Rule 4, 5
Majority Act, 1875 — Section 3

Citation : (2006) 2 CTLJ 108 : (2006) 2 JCR 131 : (2006) 1 PLJR 410 : (2007) 3 UPLBEC 85

Hon'ble Judges : J.N. Bhatt, C.J.; Narayan Roy, J; I.P. Singh, J

Bench : Full Bench

Advocate : Devendra Kumar Singh, in 3929 and Nirmal Kumar, in 4114, for the Appellant; Sanjay Kumar, Uma Kant Singh and K.K. Mandal, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, C.J.—In this group of two writ petitions virtually a common question has been placed in focus as to whether a person employed in Bihar State Khadi Gramoudyog Board, (respondent No. 1) could be superannuated on completion of the age of 58 years even if the total length of service is more than 40 years by invocation of the provision of Article 226 of the Constitution of India.

2. This reference is the outcome and has been necessitated, as such, by virtue of the reference order, on hand, dated 14.5.2004, in CWJC No. 3929 of 2004, wherein a similar question arose as to whether an employee of the Board who has completed 40 years, of service from the date of joining could be retired on completion of 40 years of service or on superannuation age of 58 years.

3. With a view to appreciate the said contention, the learned single Judge considered a Division Bench decision of this Court in the case of Mokhtar Ahmad v. Bihar State Road Transport Corporation 1995 (1) PLJR 183, wherein, it was urged that the employer cannot change the date of birth of the employee and in accordance with law. Rules and Regulations a person can be retired on completion of superannuation age and not on completion of full length of service like 40 years.

4. As against that, reliance was placed by the other side on a judgment of a Single Bench of this Court in the case of Shyam Babu Vs. State of Bihar and Others, , and it was urged that in terms of a circular dated 28.5,1991 an employee cannot be allowed to continue in the employment after completion of service period of 40 years.

5. It is in this context, the learned single Judge in the aforesaid decision had not taken into consideration the Division Bench decision of this Court in the case of Mokhtar Ahmad (supra). Again, it was further submitted before him that the Division Bench which had adjudicated upon the case of Mokhtar Ahmad (supra) had not considered the judgment of the Division Bench of this Court recorded in CWJC No. 8067 of 1992.

6. It is In this set of totality of the circumstances it was felt by the learned Single Judge that in view of a sharp conflict between th two Division Bench decisions of this Court, reference to a larger Bench has been expedient and this is how the reference has come up before us.

7. Let it be recorded at this stage that there are two writ petitions and the material three dates which have direct relevance for the consideration and adjudication of the issue in focus in this reference may be highlighted as the question of law formulated herein before is an end in both the writ petitions :

In CWJC NO- 3929 of 2004

- (i) The date of birth of the petitioner is 23.9.1947,
- (ii) The date of appointment of the petitioner in the Board is 4.3.1964,
- (iii) The date of retirement of the petitioner is 31.3.2004 which is annexed in this writ petition as Annexure-3.

In CWJC No. 4114 of 2004

- (a) The date of birth of the petitioner is 15.6.1941,
- (b) The date of appointment of the petitioner is 16.12.1963,
- (c) The date of retirement of the petitioner is 31.12.2003.

8. Thus, the entry age in service of the petitioner of the first writ petition is 16 years, 5 months and 19 days, whereas, in second writ petition the age of the petitioner is 17 years, 6 months and 1 day. It is, therefore, an admitted fact that

both the petitioners got entry into employment of the respondent Board before attaining the age of majority.

9. There is no dispute about other aspects that both the petitioners were directed to be superannuated by the impugned orders in both the writ petitions on completion of the service period of 40 years, and not the superannuation age of 58 years which has been raised as a grievance by both the petitioners by knocking the door of justice by invocation of the provisions and filing these two writ petition under Article 226 of the Constitution of India.

10. Before the merits of the main issue in focus is examined in its greater details, let there be skeleton material projection of the relevant Rule provision, as well as, the established proposition of law and the principles of jurisprudence :

(1) Our attention has been drawn to the provision of Rule 73 of the Bihar Service Code which prescribes the age of superannuation for the Government servants. It would be profitable to refer this Rule reads herein as under :-

The date of compulsory retirement of a Government servant is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement with the sanction of the State Government on public grounds, which must be recorded in writing.

(2) Let it be, also, mentioned at this stage that reliance has, also, been placed on the provision of Rule 57 of Bihar Pension Rules, 1950. It reads herein as under :

For a Government servant in inferior service, qualifying service, shall not begin until the Government servant concerned attained the age of 16 years.

(3) Strong reliance is, also, placed on a Government circular dated 15.1.1998 issued by the Personnel and Administrative Reforms Department of the State of Bihar which is placed as Annexure-3 in CWJC No. 4114 of 2004.

11. Upon conjoint reading and reliance of the aforesaid provisions, as well as, the aforesaid 1998 circular it has been vehemently. submitted before us that the impugned orders superannuating both the petitioners before attaining the superannuation age of 58 years in view of their appointment prior to the attainment of 18 years at the entry point, is illegal and unjust, requiring interference of this Court for declaring them as illegal with consequential benefits to the petitioners.

12. The aforesaid submission has been countered by learned counsel appearing for the State of Bihar, as well as, the respondent Board. It has been contended by learned counsel for the respondents that the ultimate design and the purpose of superannuation is to see that a person retires at the age of 58 years from the Government service. The entry in the Government service has been on attainment of the age of majority, in other words, on completion of age of 18 years and on completion of 40 years thereafter obviously a person would attain the age of 58 years and, therefore, that has been prescribed as the age of

superannuation in the Government Service. In this connection. Rule 5 of Liberalised Pension Rules in Appendix-5 has been made which is very Important. Section 4 of the said Rules providing for qualifying service for pension under Bihar Pension Rules, 1950, reads herein as under :

5. The minimum age after which service for pension is raised from 16 to 18 years in the case of a Government servant belonging to an inferior service (1) who enters service of the Government of Bihar, after the date on which these orders came into force or (2) who, having entered such service on or before that date did not hold a lien or suspended lien on a permanent pensionable post under the Government of Bihar on that date.

13. The plain perusal of the aforesaid statutory provision would, undoubtedly, go to suggest that the Government by virtue of an amendment by addition Rule 5 in Appendix-5 in the Bihar Pension Rules which came into effect, on 23.8.1950, long before the petitioners came to be admitted in the service of the Board and it is very clear there from that the qualifying age of the Government servants for consideration of the pensionary benefits came to be raised from 16 years to 18 in the Government service. Otherwise, also, the aforesaid circular of 1998 has a purpose and policy behind it. It is clarificatory. There is no dispute about the fact that the service between the employer and the employees is a matter of contract. Once, a person is validly entered into the service of the Government he is offered the contractual and statutory protection and the initial entry in the service always is the outcome of the contractual relationship. Who would be competent to contract? It has been provided in Section 11 of the Indian Contract Act, 1872, as to who is the competent to contract. Section 11 of the said Act reads herein as under:

Who are competent to contract.- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

14. It is very clear and evident from the said provision that in, so far as, the competence for a valid contract in terms of the age is concerned, one has to attain the age of majority and majority obviously would be according to law. The provision of Section 3 of the Majority Act, 1875, clearly provides as to what is the age of a person domiciled in India. It is in this context, it would be necessary and profitable to refer the provision of Section 3 of the Majority Act, 1875 which is reproduced as hereunder:

3. Age of Majority of persons domiciled in India.-(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.

15. It leaves no any manner of doubt that in this country the age of majority of a person, domiciled in India, has been on his attaining the age of eighteen years and not before. Of course, it would be not very material at this stage to consider that in computing the age of a person, the day on which he borns is to be included as a whole day.

16. Be that as it may, one thing is certain that admittedly both the petitioners when they entered into the contract with the respondent Board they had not attained the age of majority. Apart from its legal impact and effect, the ramifications and end result on the status of a contract, in terms of the service relationship, a person could be said to have entered into a valid service, only, when he has attained the age of majority. So the minimum age prescribed at the entry point in the Government service has been 18 years. The maximum age prescribed for the exit point is 58 years. In other words, the total length of period of Government service in any case for pensionary benefits would not exceed 40 years. It is In this context, the Government Circular mentioned herein above needs to be considered. When there is a clear Rule provision anything contrary to or inconsistent with or incompatible to it, any circular or resolution or order, will not have any legal and valid effect to abridge the right enshrined in the Rule Provision. Even if the said circular of 1998 as relied upon by the petitioners is considered to be beneficial to them then, also, it cannot be read at this juncture with the existing statutory provision incorporated in the Bihar Pension Rules, as well as, the Bihar Service Code. Therefore, from that point of view also the petitioners cannot be allowed to contend that they have right to continue even beyond the age of 58 years though provided in Rule 73 of the Bihar Service Code which prescribes the superannuation age of 58 years.

17. Thirdly, it is settled and established proposition of law and principles of jurisprudence that a person who takes undue advantage by one or other reasons at the entry point in the service cannot be allowed to urge that he be given higher benefit and if it Is urged then clearly, it goes to show that something wrong or irregular has been done, at the entry point, in service. So the settled principle, also, creates a very strong impediment in getting the relief from this Court which is exercising extraordinary, prerogative, equitable and discretionary writ jurisdiction by invocation of the provision of Article 226 of the Constitution of India.

18. In our opinion, therefore, the impugned orders questioned in both the writ petitions, obviously, cannot be interfered with from any point of view as discussed hereinabove. The proposition of law, therefore, is made evidence and unambiguous that the superannuation age prescribed in Rule 73 of the Bihar Service Code will apply for retirement purpose and a person cannot be continued beyond the age of completion of 40 years in service. It is, therefore, evidently, clear that a Government servant who has completed 40 years of service or has attained the age of 58 years has to be superannuated in terms of the existing Rule provision. Our answer, therefore, is very clear and we answer this reference

accordingly. The contradictory view in the aforesaid decisions referred to hereinbefore, shall not be a good law.

19. With this observation, we answer this reference, instead of referring the matter back to the learned single Judge by adopting extraordinary methodology for the reason that the matter is very old. It is service matter and under the Rule provision in such a given situation to obviate delay and to do justice between the parties, we dispose of both the petitions finally.

20. Both the writ petitions, therefore, shall stand dismissed.