(2012) 05 PAT CK 0017

In the Patna High Court

Case No : CWJC No. 2969 of 2012

Raj Mangal Raut — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2012) 4 PLJR 533

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Sharad Kr. Sinha and Amit Kumar Anand, for the Appellant; Vijay Kumar Verma for the State and Mr. Rajnikant Kishra for the Corporation, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for directing the respondents to declare/enhance the age of superannuation/retirement of the petitioner from 58 to 60 years as per Finance Department Resolution No. 3A-7-Maha-01/2005-1500 V.(2) dated 24.3.2005 and also as per the Bihar Service (Amendment) Code, 2007 notified vide Finance Department, Govt. of Bihar''s Notification No. 3 A-5-SE. NI.-04/2006, 8549 V.(2) dated 23.11.2007 which were equally applicable in case of employees of Bihar State Export Corporation. The claim of the petitioner is that the respondent Bihar State Export Corporation (hereinafter referred to as ''the Corporation'' for the sake of brevity) adopted all the Rules of Bihar Government regarding service of its employees and hence it must adopt the Rule of the State Government regarding enhancement of retirement age from 58 years to 60 years also.

2. He has submitted that another Corporation, namely Bihar State Handloom Powerloom and Handicraft Development Corporation Limited, filed L.P.A. No. 214 of 2010 (The State of Bihar and Others vs. Jitendra Nath Verma and Another) against the order of a learned single Judge of this Court dated 17.8.2009 by

which CWJC No. 13398 of 2008 was allowed and the Corporation was directed to superannuate the petitioner of that case after completion of 60 years of age. The Division Bench affirmed the order of the learned single Judge vide order dated 7.3.2011 passed in LPA No. 214 of 2010.

3. It is also stated by learned counsel for the petitioner that like many other Boards and Corporations, the instant Corporation after achieving its goal for sometime excellently became sick and as per the policy of the State Government many employees of the sick Boards/Corporations, including the instant Corporation, had been absorbed in other Departments of Govt. of Bihar and such employees are enjoying all the privileges of a Government Servant.

4. Learned counsel for the petitioner averred that in the year 2005. Govt. of Bihar resolved to change the age of superannuation and vide resolution dated 24.3.2005 issued memo no. 1500 dated 24.3.2005 and enhanced the age of superannuation of its employees from 58 years to 60 years. Furthermore, in Clause 7 of the aforesaid Resolution it was mentioned that steps for amendment of Rule 73 would be taken separately and after adopting the due procedure, the Bihar Service Code, 1952 was amended by Bihar Service (Amendment) Code, 2007 enhancing age of superannuation from 58 years to 60 years.

5. Learned counsel for the petitioner further submitted that the respondents had taken a plea of financial crunch, but in a similar matter, a Bench of this Court had considered a bunch of cases bearing CWJC No. 6700 of 2009 (Ram Padarath Sharma and Others vs. The State of Bihar and Others) and other analogous matters and disposed of the said writ petitions vide common order dated 17.7.2009 holding that once law has been laid down even in one case by this Court it is not necessary for all the employees to come to this court for reliefs as the law applies to all and it shall be deemed that the age of superannuation has been extended from 58 years to 60 years for the employees of the Corporation also.

6. It is also argued that when the Corporation involved in the aforesaid cases did not enhance the age, a suo motu contempt was initiated by the High Court. A similar view was taken by a Bench of this Court in the common order dated 11.8.2009 deciding CWJC No. 14689 of 2007 (Pramod Narayan Pandey vs. The State of Bihar and Others) heard alongwith MJC No. 2061 of 2009 and CWJC No. 17313 of 2008 and MJC No. 2064 of 2009. Hence, learned counsel for the petitioner averred that it was the duty of the Corporation to enhance the age of superannuation of its employees also from 58 years to 60 years.

7. On the other hand, learned counsel for the Corporation (respondent no. 5) claimed that the Corporation had to work on the direction of the State Government as per the instruction sent by the authorities of the Government dated 10.12.2008 and 13.2.2012. He also referred to a decision of the Division Bench of this Court dated 18.11.2011 passed in LPA No. 1558 of 2011 in which it was held that it was not possible for that Court to hold that Bihar Service Code

as modified or altered from time to time is made applicable to the employees of the Corporation.

8. Learned counsel for the State of Bihar and its authorities (respondent nos. 1, 2, 3, 4, 6 and 7) stated that the State Government has laid down a policy pertaining to the enhancement of the age of the employees of Public Sector Undertaking of the State which was circulated through the Department of Finance letter No. 177 dated 21.11.2008 and letter No. 182 dated 25.11.2008 and under the said Policy retirement age of working employees of only those public sector undertaking can be enhanced from 58 years to 60 years which is in profit since 5 years and whose accumulated loss is liquidated. He also submitted that any proposal pertaining to the matter in issue is required to be examined under the condition of the aforesaid policy of the State Government.

9. Learned counsel for the respondents-State also relied upon a letter dated 22.11.2008 issued by the Deputy Finance Commissioner of the State of Bihar sent to the Principal Secretaries and Secretaries of all the Corporations/ Departments etc. informing that the Government has taken a policy decision as stated above. Hence, it was averred that the claim of the petitioner would not be sustained in the eye of law in view of the aforesaid policy decision of the Government.

10. Considering the entire facts and circumstances of this case as well as the arguments placed before this Court it is quite apparent that the decision of the Division Bench of this Court relied upon by learned counsel for the respondents, namely order dated 18.11.2011 passed in LPA No. 1558 of 2011 is not applicable to the facts and circumstances of this case inasmuch as in the said decision it was held that unless a resolution passed by the Board of Directors of the Corporation provides that the provisions contained in the Bihar Service Code as amended from time to time shall apply to the employees of the Corporation, the contention cannot be countenanced and furthermore the appellant of the aforesaid case had already retired from service earlier after reaching the age of superannuation.

11. According to the aforesaid decision of the Division Bench of this Court it was for the Corporation to take a decision in that regard after amendment of the Government Rules regarding enhancing the age of superannuation and hence the claim of the respondent-Corporation that nothing can be done unless the Government decides to implement the age of superannuation of its employees to the employees of the Corporation also, miserably fails. Thus, it transpires that the authorities of the Corporation as well as the authorities of the State Government are merely trying to pass the buck on each other without any intention to enhance the age of superannuation of the employees of the Corporation as per the amendment of the Government Rules.

12. It further transpires that it is not for the first time that a Corporation is trying to shirk from its duties in the instant case, rather earlier also the authorities of

another Corporation had acted in the same manner and the High Court vide order dated 17.8.2009 passed in CWJC No. 13398 of 2008 had to interfere in the matter by directing the authorities of the Corporation to superannuate the petitioner of that case after completion of 60 years of age as per the Government Rules. The said order had been affirmed by a Division Bench of this Court vide order dated 7.3.2011 passed in LPA No. 214 of 2010.

13. It is not in dispute that the State Government resolved to enhance the age of superannuation of its employees from 58 years to 60 years as far as back on 24.3.2005 and the said resolution was fully complied by amending the Rules vide Bihar Service (Amendment) Code, 2007 enhancing the age of its employees from 58 years to 60 years. Such Corporations, like respondent namely Bihar State Export Corporation, are legally considered to be an arm of governance by the State which has its legal entity having all such privileges as had been conferred on it by the Government through legislations etc. Hence, the Corporation cannot legally refuse to enhance the age of superannuation of its employees when the age of superannuation of the employees of the State Government had already been extended from 58 years to 60 years.

14. Such refusal as discussed above, I am afraid, may affect the basic right of equality as enshrined in Article 14 of the Constitution of India. Since the guarantee of equal protection of law and equality before law embraces the entire realm of State action, it would extend not only when an individual is discriminated against, but also in the matter when a group of people, such as employees of a Corporation, is discriminated against, when no such classification is provided by the Constitution of India.

15. So far the pleas of financial crunch and loss to the Corporation taken by the respondents are concerned it is quite apparent that the State Government had enhanced the age of superannuation of its employees by amendment in its Service Code and communication to that effect dated 21.11.2008 had been sent by the State Government to the Corporation, but pursuant to that no decision of the Board of Directors of the instant Corporation had been taken. It is well settled that no sooner the Government amended Rule 73 of the Bihar Service Code, the age of superannuation automatically applied to the Corporation and if that be so, unless the Corporation took a decision otherwise, the said amendment would continue to apply to the Corporation also. The respondents had miserably failed to bring on record any material to show that any such action had been taken by the authorities of the Corporation. In similar circumstances, a Bench of this Court disposed of CWJC No. 5429 of 2009 and analogous cases vide order dated 30.1.2009 accepting the extension of age of superannuation of the employees of the Corporation involved in that case. In the aforesaid facts and circumstances, the instant writ petition is allowed and the respondent-Bihar State Export Corporation and its Managing Director are hereby directed to enhance the age of superannuation/retirement of the petitioner from 58 years to 60 years in view of Finance Department Resolution No. 3A-7-

Maha-01/2005-1500 V.(2) dated 24.3.2005 and also as per the Bihar Service (Amendment) Code, 2007 notified vide Finance Department, Govt. of Bihar''s Notification No. 3A-5-SE. NI.-04/2006, 8549 V.(2) dated 23.11.2007 which are hereby held to be equally applicable in the case of employees of Bihar State Export Corporation also.

