

(2003) 07 JH CK 0096
In the Jharkhand High Court
Case No : CWJC No. 1480 of 2001

Raja Ram Sharma

APPELLANT

Vs

Ranchi Municipal Corporation and Another

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 42
Constitution of India, 1950 — Article 226
Municipality of ficer and Servant (Appointment, Duties Disciplines and Appeal) Rules — Rule 4

Citation : (2004) 2 JCR 5

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : M.N. Sinha and Dilip Kr. Prasad, for the Appellant; P.K. Prasad and R.R. Nath, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner herein was appointed as Tax Collector of the Ranchi Municipality on 7.10.1960. The normal age of superannuation of an employee of the Ranchi Municipality which was subsequently converted into Ranchi Municipal Corporation, is 58 years. The date of birth given by the petitioner while joining service of the Municipality was 3.6.1943. According to the petitioner, he was entitled to continue in service till he attains the age of 58 years on 2.6.2001. But on 6.10.2000, by communication Annexure 3 he was informed that he has completed 40 years of service and he was being retired. The petitioner has challenged this communication retiring him from service on completion of 40 years of service, but before he attained the age of 58 years.

2. The petitioner has relied on a decision of the Patna High Court in Mokhtar Ahmad v. Bihar State Road Transport. 1995 (1) PLJR 183 in support of his submission that he was entitled to continue in service until he attained the age of superannuation. His further submission was that there was no minimum age prescribed for appointment under the Bihar Service Code and since the Ranchi

Municipal Corporation adopted that Service Code he could not be retired before he attains the age of 58 years. This claim of the petitioner was met by the Corporation by relying upon another decision of the Patna High Court at Ranchi Bench, in LPA No. 91 of 1995, *Radhey Shyam Pathak v. Municipal Commissioner of Dhanbad Municipality and Ors.* According to the Corporation, in that case, a person was appointed before his attaining the age of 18 years in the service of the Municipality. On completion of 40 years of service, his service was terminated. He had challenged that termination contending that till he attains the age of 58 years, he was entitled to continue in service. The Division Bench distinguishing the decision in *Mokhtar Ahmad*, case (supra), dismissed the appeal confirming the action of the Municipality. This was based on a decision taken to terminate employees on completion of 40 years. Subsequent to that decision of the Division Bench LPA No. 91 of 1995, direction was issued to all Municipal Corporations and Municipalities to superannuate employees who had completed 40 years of service. It was on that basis that the petitioner was superannuated. If the ratio of the decision in LPA No. 91 of 1995 is strictly applied, it could be also found that the appointment of the petitioner was void since on 7.10.1960 he had not completed the age of 18 years. It was also submitted that Regulation of the Municipality was different and unlike in the Bihar Service Code, the Municipality Officer and Servant (Appointment, Duties, Disciplines and Appeal) Rules, prescribed a minimum age for appointment. Rule 4(b) of the Rules provides that no Officer or servant of the Corporation shall be appointed unless he is above 18 years. It was further submitted that there is nothing illegal in the action of superannuating the petitioner on his completing 40 years of service.

3. The learned Single Judge before whom the writ petition came up, thought that the correctness of the decision in *Mokhtar Ahmad*, case had to be reconsidered in the light of the relevant Rules as also the question whether the provisions of Bihar Service Code could be said to have retrospective operation. The learned Judge therefore referred the writ petition to a Division Bench. It is thus that the writ petition has come up before us.

4. We find that there is no challenge to the circular in the writ petition filed by the petitioner. An attempt has been made to plead that the circular was not being enforced in the case of various other employees who had completed 40 years of service, and they were allowed to continue. But that fact even if true, cannot confer a right on the petitioner to claim to continue service, if he is not able to show that the order of superannuation is in any manner illegal or unconstitutional. Learned counsel essentially relied on the decision in *Mokhtar Ahmad* to contend that there was no minimum age for appointment in the service of the Corporation since the Bihar Service Code has been made applicable and in that situation, the fixation of age of superannuation as 58 years should prevail and going by the date of birth of the petitioner in the records of the Corporation, the petitioner was entitled to continue till 2.6.2001. We find it difficult to accept this submission on behalf of the petitioner too, we find that an appointment to the Municipality like that of the petitioner was governed by the

Municipality Officer and Servant (Appointment, Duties, Disciplines and Appeal) Rules framed u/s 42 of the Bihar & Orissa Municipal Act, 1922. Rule 4(b) clearly provides that no officer or servant of the Commission shall be appointed, unless he is above 18 years of age and below 25 years. Of course, there is a desertion, relating to the upper age limit, but not of lower age limit. Therefore, as observed in the judgment of the Division Bench in LPA No. 91 of 1995 it is possible to say, the appointment of the petitioner was not valid. But at this distance of time, we do not think it necessary to go into that question since the petitioner had entered the service on 7.10.1960 and he had continued in service thereafter. But this aspect cannot be ignored when considering the applicability of this ratio in LPA No. 91 of 1995 and the attempt to distinguish made therein of the ratio of Mokhtar Ahmad. In other words, we are of the view that the present case is really governed by the ratio of the decision in LPA No. 91 of 1995. The basis: on which the decision in Mokhtar Ahmad was rendered, namely, there is no minimum age for appointment in the service, is not available in the present case since the Rules provided a minimum age for appointment as 18 years. Therefore, we are satisfied that the decision in Mokhtar Ahmad, case is distinguishable. In that context, it is not necessary for us to consider the question, whether the Bihar Service Code can be retrospectively applied. Suffice it to say that the action in retiring the petitioner on completion, of service for 40 years is legal and justified. In this situation, we find no merit in this writ petition. It is dismissed.

5. The retrial benefit due to the petitioner on the basis of his superannuation which we have upheld should be calculated and paid to him expeditiously.