(2007) 05 PAT CK 0045

In the Patna High Court

Case No : CWJC No. 7846 of 2006

Ram Narain Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 66B

Citation : (2007) 3 PLJR 214

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : K.N. Gupta, Rajesh Prasad Choudhary in all, Yogendra Mishra, Rajesh Kumar Singh in 7846; Chittaranjan Singh, Alok Anand in 8971; Narendra Prasad, Akashdeep, Shyameshwar Kr. Singh in 10337, for the Appellant;

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. In all the three writ applications petitioners are aggrieved because they have been retired on reaching the age of 58 years. All these petitioners are employees of various Milk Co-operative Societies, which are controlled by the nodal organisation known as Bihar State Co-operative Milk Producers'' Federation (in short COMFED). Petitioners have submitted before this Court that the societies in question are duty bound by the directives which has been issued to them by the Secretary, Department of Co-operative in his memo No. 1305 dated 15.5.2006. Perusal of this order indicates that this directive has been issued by the State Government while exercising its powers u/s 66B of the Bihar Co-operative Societies Act, 1935. All the societies under whom these various petitioners have been working are governed by the Co-operative Societies Act and the directive according to the petitioner which has been issued by the Secretary of the Department is binding upon these societies.

2. It is necessary to take a look at the directives which has been issued and the same is contained at Annexure-2 of C.W.J.C. No. 7846 of 2006. It states that on

various representations having been made to the State Government with regard to employees working under Co-operative Societies the Government has taken a concerted decision to enhance the age of retirement of employees working under Co-operative Societies to 60 years. This was done to bring some kind of parity between the age of retirement of employees under the State Government vis-a-vis the employees working under Cooperative Societies. This enhancement of age of retirement, however, was not absolute. There are five conditions which have been laid down and these conditions or the parameters are the only parameters under which the benefit of enhanced age of retirement can be denied to any employee or a set of employees working in a society. If the society does not fulfil any of those conditions or an employee does not fulfil any of those conditions only in those cases their age of retirement shall be 58 years. In other words, enhancement of age of retirement of employees working under various co-operative societies have been enhanced to 60 years. Only in some cases this age of retirement has been held to be of 58 years.

3. Another aspect which must be taken note of in this order is that the enhanced age of retirement of 60 years as directed by the Secretary shall come into the effect from date of issuance of the order. The order is dated 15.5.2006 meaning thereby that only such employees will be given the benefit of enhanced age of retirement who continued to be in service after 15.5.2006. People who have retired prior to the given date shall not get benefit of the same.

4. One important aspect which must be noted from the said order is that the order states that the enhancement of age of retirement shall deem to mean corresponding changes in the Rules and Regulations which are applicable or in operation in various Co-operative Societies. By virtue of the order a deemed amendment in all the Regulations or the Service Conditions of all the Co-operative Societies have been brought about by the State Government. The objective of the same can well be understood because some kind of conformity has to be brought out in the age of retirement of employees and it cannot be anybody''s case that there should be uncertainty, with regard to the age of retirement of any employee.

5. It is in this background that these petitioners are before this Court. They submit that Board of Directors of COMFED have illegally and arbitrarily refused to enhance the age of retirement of various employees who are members of this Federation. According to them the decision taken by the Board is not only in conflict with the directives of the State Government but also shows total lack of application of mind by them while deciding the matter. Petitioners have brought several evidence on record that an exercise on behalf of COMFED was carried out by the Managing Director and he submitted his recommendation in light of that exercise for consideration by the Board of Directors. They bring to my notice Annexure-9 series which are various notings of the Managing Director with regard to the proposal of enhancement of age of retirement of the employees. They specially bring to my notice the note dated 4.9.2006 of the Managing

Director. From a reading of this note it is apparent that the Managing Director had carried out an exercise to find out whether the body in question fulfilled the conditions which had been laid down by the Secretary before enhancement in the age of retirement can be accepted or recommended. The note of the Managing Director dated 4.9.2006 is very categorical and after discussing various parameters it does recommend enhancement in age of retirement of employees. This recommendation and finding was placed before the Board of Directors. The decision of the Board of Directors taken in the 64th meeting held on 10.1.2007 and 24.1.2007 have been brought on record as Annexure-10. Petitioners draw my attention to that part of the order where the issue of enhancement of age of retirement of the employees has been discussed. The decision of the Board of Directors is a cryptic one which only says that after consideration, the recommendation is rejected. It further records that if any need for hands or employees of technical nature are required then such employees can be appointed on contract basis from year to year for a maximum period of two years. This will be a fresh appointment.

6. Petitioners have attacked this decision of the Board of Directors on many grounds. They urge that there is no application of mind by the Board of Directors while deciding the issue of enhancement of age. The order does not give any reason as to why the recommendation made by the Managing Director, categorically recording the fact that the societies and the members of COMFED fulfilled all the conditions, in terms of the directive of the Secretary dated 15.5.2006 has not been accepted. Rejection of the proposal is an arbitrary decision devoid of reason if not alien to the issues under consideration.

7. Another submission of the petitioners are whether COMFED has the necessary power to reject enhancement in age of retirement of its employees. In terms of the order of the Secretary of the Department the age of retirement of employees of various Co-operative Societies has been fixed at 60 years. It is only in exceptional circumstance that this has to be curtailed or reduced to 58 years. If that be the position then the Board of Directors could turn down the proposal of the Managing Director only if the societies did not fulfil any of the conditions which the Secretary had laid down in his order but it does not seem to be so. It is not the case that they have due freedom to fix a date of retirement for the employees on their own sweet will. The directives of the Secretary in this regard is a mandatory directive and the same has been issued while exercising a statutory power conferred upon the Government u/s 66B of the Co-operative Societies Act. This has been held to be so by a Division Bench of this Court in case of Mohd. Ali and Others Vs. The State of Bihar and Others, . If this be so then the question does arise whether the decision contained in Annexure-10 taken by the Board of Directors of COMFED is in conformity with law or not?

8. Counsel for COMFED and other Co-operative Milk Societies have made their submissions. They take a stand that the directives which has been issued to them by the Secretary is not binding upon them. They even submit that this is

an invasion in their working and their independent status. They take a stand that the directive of the Secretary is a conditional directive. The absolute power either to enhance the age or not to enhance the age of the employees of these Co-operative Societies ultimately vest in them. It is for their Board of Directors to decide as to what would be the age of retirement of its employees.

9. The stand taken by the respondents could have been correct but that was may be prior to 1989. After the amendment brought about in the Co-operative Societies Act in the year 1989 and when the legislatures have incorporated Section 66B in the Co-operative Societies Act it is not open to the respondents to take this plea. This amendment in question had been challenged in various writ applications earlier but it has stood the scrutiny of law and time. Section 66B has been held to be a valid piece of legislation and, therefore, the State Government does have powers to issue directives to various Cooperative Societies in matters of appointment and service conditions which shall govern the employees working under the Societies. This question is no more res Integra in view of decision of Md. Ali (supra).

10. this Court must take note of this fact that Annexure-2 came to be issued after due deliberations made by the State Government as the issue of enhancement in the age of retirement of large numbers of Co-operative Societies was referred to the State or Registrar of Co-operative. In this background, a policy decision was taken and a directive had to be issued by the State Government to state the last word on the age of retirement of employees working under the Co-operative Societies. If the State Government has issued a directive then this directive is very much in consonance with the power which has been conferred upon it by the statute in this regard. These directives are binding on all the Co-operative Societies including COMFED. this Court, therefore, comes to a conclusion that the decision taken by the Board of Directors of COMFED not to enhance the age of retirement to 60 years as contained in Annexure-10 is an arbitrary and illegal decision and is accordingly quashed.

11. this Court directs that these petitioners if they have not superannuated prior to 15.5.2006 will be taken back in service and would be allowed to continue as such till they reach the enhanced age of retirement i.e. 60 years of age. this Court, however, grants liberty to COMFED to reconsider its decision, if subsequently it is found that they do not fulfil any of the conditions from Clause 1 to 5 which has been laid down by the Secretary in his order dated 15.5.2006. That will be a prospective decision and will not relate back in any manner to the past decision of the Societies to retire its employees at the age of 58 years. These, writ applications, there fore, stand allowed to the extent indicated above.

