(2008) 11 JH CK 0042

In the Jharkhand High Court

Ram Naresh Singh and Janardhan Prasad Singh — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Citation : (2009) 1 JCR 168

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Claiming parity in the service conditions with the State Government employees, the petitioners who are employees of the Dhanbad Municipality have prayed for an order for quashing the notice dated 04.01.2005 (Annexure-5) issued under the signature of the Special Officer, Dhanbad Municipality (Respondent No. 4) whereby the petitioners were informed that they would superannuate from service on their attaining the age of 58 years respectively.

A further prayer has also been made for a declaration that the notification No. 5826 dated 26.10.2004 issued by the Government of Jharkhand enhancing the age of superannuation of Government employees is also applicable to the employees of Dhanbad Municipality.

2. In support of their claim, the petitioners have raised the following grounds:

(i) By notification No. S.O. 95 dated 25.06.1977 issued u/s 42(2) of the Bihar & Orissa Municipal Act, 1922, the service conditions under the Bihar Service Code as was applicable to the Government employees, was made applicable for all the officers and servants of the municipality and the Notified Area Committees.

(ii) Following the above notification, the Department of Urban Development, Government of Bihar issued a notification dated 2nd February, 1981 implementing all the pay and service conditions as applicable to the State

Government employees, to the municipal employees also and had also stopped appointments of employees to the Class-III and Class-IV posts of the municipality and such appointment was subsequently followed by the procedure laid by the State Government for the appointment of Government employees.

(iii) The Government of Jharkhand vide its notification dated 26.11.2004 increased the age of superannuation of the Government employees from 58 years to 60 years.

(iv) Pursuant to the above notification of the State Government, the Special Officer, Dhanbad Municipality also communicated to the Secretary, Urban Development Department that the age of retirement of the municipal employees was also increased to 60 years.

(v) Having increased the age of retirement to 60 years, the same Special Officer, according to the petitioners, could not unilaterally reduce the retirement age from 60 years to 58 years and issue the impugned notice for the retirement of the petitioners.

3. Shri Faizur Rehman, learned Counsel for the petitioners would argue that the respondents cannot deny parity of the municipal employees with the government employees in the matters of service conditions since Rule 73 of the Jharkhand Service Code as amended, applies in equal measure to the employees of the municipalities including the Dhanbad Municipality.

4. Per contra the stand taken by the respondents as appearing in the counter affidavit is that the claim of the petitioners is misconceived firstly because Rule 73 of the Bihar Service Code does not appear to have been amended under the notification No. 5826 dated 26.10.2004 issued by the State of Jharkhand. Shri Sumin Garodia, learned Counsel representing the respondents argues that even presuming that Rule 73 of the Bihar Service Code has been amended by the aforesaid notification, that also would not be applicable to the employees of the municipality unless the State Government, in exercise of its powers u/s 42(2) of the Bihar & Orissa Municipal Act, 1922, specifically adopts the said notification and makes it applicable to the employees of the municipality also.

Learned Counsel explains that by letter dated 17.01.2005, issued by the Urban Development Department, Government of Jharkhand, it has been clarified that the benefits of the Government Notification dated 26.10.2004 cannot be extended to the employees of the municipalities and corporations as they are not State Government employees.

Learned Counsel adds further that it is open to the State Government to extend the benefit of the said notification to the employees of the municipalities also and in such event, the respondent municipality would be legally bound to follow the directions issued by the State Government.

5. Learned Counsel for the petitioner intervenes at this juncture to point out that pursuant to the order passed by this Court in a similar writ application vide W.P.

(S) No. 152 of 2005 in which identical issues of enhancement of retirement age of municipal employees arose, this Court while disposing of the writ application on 31.01.2005, issued a direction to the Secretary, Urban Development Department, Government of Jharkhand to decide on the issue of enhancement of retirement age by 5th February, 2005 and further observed that all those employees who would otherwise have retired on attaining the age of 58 years, by 31.01.2005, shall be deemed to continue in service.

Learned Counsel adds that pursuant to the aforesaid order of this Court, the Government of Jharkhand had taken a decision to enhance the age of superannuation of the municipality employees to 60 years. Learned Counsel refers in this context to a newspaper reporting (Annexure-7).

6. The above stand taken by the counsel for the petitioners has not been denied by the respondents. Rather, by their supplementary counter affidavit, the respondents have admitted that the Government of Jharkhand had adopted the resolution and issued its notification vide Memo No. 658 dated 13.04.2005 deciding to enhance the age of superannuation of employees of municipal corporations, municipality and notified area committees from 58 years to 60 years. Learned Counsel for the respondent however points out that the aforesaid order has been made applicable with effect from 02.01.2005 fixing the cut of date thereby as 31.12.2004. The petitioners had completed the age of 58 years prior to the aforesaid cut of date and therefore, the aforesaid resolution would not be applicable to the petitioners who will be deemed to have superannuated with effect from 01.01.2005 on their completing the age of 58 years respectively.

7. The issue therefore, is whether the benefits of the State Government Resolution to treat the municipal employees at par with the Government employees in the matter of enhancement of the age of superannuation should not be made available to the petitioners because of the cut of date.

8. A similar issue arose for consideration before this Court in a few writ applications filed by the employees of different municipalities and municipal corporation of the State of Jharkhand in which they had sought a direction upon the respondents that in view of the Government?s resolution dated 26.10.2004, they should also be treated at par with the Government employees and the age of superannuation should be increased for the municipal employees also to 60 years. While considering the issue raised in the aforesaid writ applications, vide W.P.(S) No. 152 of 2005, this Court had observed that the Urban Development Department ought to have taken a decision in respect of the employees of the municipalities and municipal corporations when the State Government by its notification had enhanced the retirement age of Government employees from 58 years to 60 years. It also observed that in the event a decision for enhancement of the age of superannuation is taken by the said department and if the decision is not given retrospective effect, then those employees who have retired on 31.01.2005 and thereafter shall be seriously affected and they shall be deprived from the benefits merely because of the inactions on the part of the concerned

department in taking such decision. Accordingly, a direction was issued to the Urban Development Department of the State Government to take immediate decision in the matter of enhancement of the age of superannuation of the employees of the municipalities, municipal corporation and pending such decision, all employees who would retire on 31.01.2005 and thereafter shall be deemed to continue in service. It is observed that the State Government Notification enhancing the age of superannuation of Government employees from 58 years to 60 years was issued on 26.10.2004.

9. As pointed out by the learned Counsel for the petitioners referring to Annexure-1, that by the notification issued by the Government vide notification No. SO-95 dated 25.06.1977, the Rules relating to the service conditions of Government Servants was made applicable to the officers and servants of the Municipalities and Notified Area Committees also. It has also been pointed out that in consonance with the above notification, the Government of Bihar had also revised the pay scales of the officers and the servants of the Municipalities, Municipal Corporations and the Notified Area Committees at par with the salaries and financial benefits applicable to the Government Servants. It was pointed out that at the relevant time the age of superannuation of the Government servants was 58 years which was subsequently enhanced to 60 years vide notification dated 26.10.2004 issued by the State of Jharkhand. If this was so, there was no reason as to why the benefits of such notification enhancing the age of superannuation of Government employees, should not be made applicable to the municipal employees also. The Urban Development Department has finally decided to enhance the age of superannuation of the municipal employees as confirmed by the Counsel for the respondents. Had such decision been taken promptly after the issuance of the State Government?s Notification relating to the Government servants, the petitioners also would have benefited. But for the inaction of the Urban Development Department, the petitioners are being denied of the privilege of enhancement of the retirement age on the ground of fixing of the cut of date.

It may be reiterated that admittedly by the notification issued by the Government of Bihar vide notification No. S.O. 95 dated 25.06.1977, the service conditions of Government Employees under the Bihar Service Code was made applicable to the municipal employees also and the aforesaid notification was adopted by the Government of Jharkhand. It implies therefore, that the subsequent resolution of the State Government notified on 26.10.2004 for enhancement of the age of superannuation of the Government employees, would apply to the municipal employees also.

10. Under such circumstances, fixing the cut of date as 31.12.2004 cannot be justified. The benefit of enhancement of age of superannuation should have been made applicable to the municipal employees also from the date when enhancement was made applicable to the Government employees under the State Government Notification dated 26.10.2004. The petitioners in the instant

case could not have been superannuated on the ground that they had attained the age of 58 years on or before the cut of date of 31.12.2004. Rather, the petitioners ought to have been given the benefits of the enhanced age of retirement till they attain the age of 60 years.

11. In the light of the above discussions, I find merit in this application. Accordingly, the same is allowed. The impugned notice dated 04.01.2005 issued by the Respondent No. 4 is hereby quashed. The petitioners are entitled to the benefits of the enhancement of the age of superannuation as applicable to the Government servants till they attain the enhanced age of superannuation of 60 years. In the event the petitioners have already attained the age of 60 years during the pendency of this writ application, the respondents shall treat them to be in service till the date the petitioners have attained the age of 60 years.

