

(2016) 02 SC CK 0017

In the Supreme Court Of India

Case No : Writ Petition (Civil) Nos. 129 of 2010

Sachchidanand Singh

APPELLANT

Vs

Bihar State Food & Civil Sup. Corp. Ltd. and others

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Citation : (2016) 3 Scale 363

Hon'ble Judges : Fakkir Mohamed Ibrahim Kalifulla;C. Nagappan, JJ.

Bench : Division Bench

Advocate : Praveen Swarup, Ankita Sharma and Sushma Verma, Advocates, in W.P. 129/2010, Arup Banerjee and Mohd. Naved, Advocates. in SLP. 25884/11, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition is for the issuance of a mandamus to direct the Respondent No.1/Corporation to release all consequential retirement benefits including payment of salary for the petitioner till he reached the age of sixty years as the age of superannuation with interest thereon.

2. To briefly narrate the case of the petitioner, he joined as Assistant Godown Manager in the Respondent No.1/Corporation on 5.2.1975. At the time when the petitioner joined the services by virtue of a Resolution of the Corporation dated 21.5.1973, the Bihar Service Code was made applicable to the employees of the Corporation, till such time it is replaced by a Code to be formulated by the Corporation of its own. At the time when the petitioner joined, as per the Bihar Service Code the age of retirement was 58 years. Subsequently, by way of an amendment to Bihar Service Code, the age of retirement was modified as 60 years with effect from 24.3.2005.

3. The Respondent No.1/Corporation intimated the petitioner by a letter dated 30.11.2005 that he would be reaching the age of superannuation, namely, 58 years on 31.12.2005. On 2.12.2005, the petitioner made a representation

contending that after the amendment to the Bihar Service Code which came into effect on 24.3.2005, he was entitled to continue in service till 60 years of age. The said representation was rejected by Respondent No.1. The petitioner filed a writ petition in Jharkhand High Court in W.P. No.7138 of 2005 and the said Writ Petition was dismissed in limine by order dated 20.7.2006 holding that since the petitioner having been superannuated on attaining the age of 58 years, High Court was not inclined to entertain the writ petition.

4. Another set of employees, who were similarly situated like that of the petitioner moved the High Court of Patna by way of separate writ petitions and some others who were aggrieved like that of the petitioner who suffered an adverse order before the learned Single Judge preferred Letters Patent Appeals. The Letters Patent Appeals as well as the connected writ petitions were heard together by the Division Bench and by a judgment dated 17.1.2008 the Division Bench took the view that when once by the Resolution of the year 1973, the Respondent No.1/Corporation decided to adopt the Bihar Service Code till such time it formulated its own regulations, any subsequent amendment in the Bihar Service Code would ipso facto apply to Respondent No.1/Corporation and its employees. The Division Bench also held that since there was no other Rule or Regulation formulated by Respondent No.1/Corporation even as of the year 2008, the Bihar Service Code as was amended in the year 2005, by which the age of retirement was enhanced to 60 years automatically applied to the employees of Respondent No.1/Corporation.

5. On the above basis, the Division Bench ultimately passed the following order:-

"In those circumstances, the appeals are allowed. The orders under the appeals are set aside. The writ petition filed by the appellants and also other writ petitions considered analogously are allowed and the Corporation is directed to pay the salaries payable to the petitioners treating them to have served until the age of 60 years. It is declared that in view of the resolution of the Corporation dated 21st May, 1973 they were entitled to serve up to the age of 60 years no sooner Rule 73 of the Bihar Service Code stood altered in the manner as indicated above. In the event of any of these writ petitioners has not yet attained the age of 60 years, they should forthwith be permitted to rejoin their services."

6. The Respondent No.1/Corporation preferred special leave petitions in this Court against the said order of the Division Bench dated 17.1.2008, which came to be dismissed on 2.5.2008. The Review was also dismissed on 11.2.2009 and it is stated that the curative petition was also subsequently dismissed.

7. So far as the petitioner was concerned, after the order passed by the Patna High Court, he filed a representation to Respondent No.1 on 8.2.2008 to treat him on par with the petitioners covered by the order dated 17.1.2008 passed by the Division Bench. As there was no response to his representation he made a further representation on 28.5.2009, to which also there was no response from Respondent No.1. It was in the above stated background he has come forward

with this writ petition seeking for the above prayer mentioned in the earlier part of this order.

8. Having heard learned counsel for the petitioner as well as Respondent No.1/ Corporation, we find that whatever relief granted to the parties in the Division Bench judgment dated 17.1.2008 should enure to the benefit of the petitioner. As has been rightly held by the Division Bench, since by the Resolution of 1973, Respondent No.1/Corporation decided to adopt the Bihar Service Code till such time it formulated its own Service Regulation, it was bound by the subsequent amendment brought to the Bihar Service Code in the year 2005, by which the age of retirement was enhanced from 58 to 60 years. Without there being any other separate Code of its own, the Respondent No.1 cannot be heard to take the stand that with regard to the age of retirement it can take its own decision other than whatever provided for in the Bihar Service Code.

9. Therefore, we fully concur with the conclusion of the Division Bench in its order dated 17.1.2008. When the said decision of the Division Bench has become final and conclusive, there is no reason to treat the petitioner, who was diligently prosecuting his rights once before the Jharkhand High Court and thereafter by approaching the Respondent No.1 itself by way of representations, after the decision of the Division Bench of the Patna High Court.

10. In such circumstances, the dismissal of the petitioner's writ petition by the Jharkhand High Court, which came to be made without giving any convincing reasons and without considering the issue in the manner in which it was dealt with by the Division Bench in its order dated 17.1.2008, should not stand in the way of the petitioner getting the benefit as was granted to the similarly placed employees. Since the judgment of the Jharkhand High Court dated 20.7.2006 came to be passed on the footing that the petitioner already reached the age of 58 years and, therefore, the learned Judge was not inclined to entertain the writ petition, it must be held that the said order should not stand in the way of the petitioner claiming his due benefits as was granted by the Division Bench in the order dated 17.1.2008 in LPA No.829 of 2007 and batch. Consequently the petitioner shall be entitled and paid the salaries treating him as though he was in service till the age of 60 years.

11. We make it clear that we granted the above benefit to the petitioner in the peculiar facts of this case, where we find that the petitioner was diligently prosecuting for his rights by approaching the Court as well as Respondent No.1/ Corporation. Therefore, this order cannot be quoted as a precedent in any other case.

12. With the above observations and directions, the Writ Petition stands allowed.