

(2015) 07 PAT CK 0032

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 3053 of 2014 in Civil Writ Jurisdiction Case No. 4303 of 2014 and Civil Review No. 348 of 2014 in Civil Writ Jurisdiction Case No. 4303 of 2014

Satya Priya Kumar Sinha and Others

APPELLANT

Vs

Anjani Kumar Singh and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 PAT CK 0032

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Fahimuddin, for the Appellant; Anil Kumar, Advocates for the Respondent

Judgement

Chakradhari Sharan Singh, J.—Civil Review No. 348 of 2014 has been preferred by the Bihar State Handloom and Handicrafts Development Corporation Limited, seeking review of an order dated 25.04.2014 passed in CWJC No. 4303 of 2014 (Satya Priya Kumar Sinha and Ors Vs. The State of Bihar and others) whereas MJC No. 3053 of 2014 has been filed, seeking initiation of contempt proceeding against the Opposite parties for having deliberately disobeyed the said order of this Court dated 25.04.2014. This is the reason why both the applications have been heard together and are being disposed of by the present common judgment.

2. The parties, in the present judgment, are being described as per their party position in Civil Review No. 348 of 2014.

3. The Respondent Nos. 4 and 5 had filed an application under Article 226 of the Constitution of India being CWJC No. 4303 of 2014, seeking a direction from this Court commanding the respondents to grant them the benefit of extended retirement age of 60 years. It was their case that they were working in Bihar State Handloom and Handicrafts Corporation Limited, a Government of Bihar Undertaking. Service condition of employees of the said Corporation was not

specifically determined, by framing Rules and the Corporation had adopted Bihar Service Code for its employees, in toto. The Corporation is under the administrative control of the Industries Department, Government of Bihar. The age of superannuation for the employees of the State Government of Bihar was earlier 58 years but in the year 2005, superannuation age of the employees of the State Government was enhanced to 60 years. With a case that such enhancement in the age of superannuation was applicable to the employees of Bihar State Handloom and Handicrafts Corporation Limited also and that many other Boards and Corporation under the State Government of Bihar had enhanced the superannuation age for their employees to 60, in the light of the State Government decision, Respondent Nos. 4 and 5 claimed a similar treatment, by filing the said CWJC No. 4303 of 2014 (Satya Priya Kumar Sinha and another Vs. State of Bihar and others).

4. They made out a case before this Court in CWJC No. 4303 of 2014 that they were wrongly made to retire from service of the Corporation on attaining the age of 58 years, though they were entitled to continue till completion of 60 years.

5. This Court, in view of certain admitted facts, particularly, in view of an order dated 17.8.2009 passed in CWJC No. 13398 of 2008 (Jitendra Nath Verma, Vs. The State of Bihar and ors) which was affirmed subsequently in LPA No. 214 of 2010 vide order dated 7.3.2011, allowed the writ application by an order dated 25.04.2014, directing that the Respondent Nos. 4 and 5 would be entitled for enhanced the age of superannuation i.e. sixty years and would also be entitled for consequential benefits also. Following was the order dated 25.4.2014 passed in CWJC No. 4303 of 2014 (Satya Priya Kumar Sinha Vs. The State of Bihar and ors):-

"The petitioners were employees under Bihar State Handloom and Handicrafts Development Corporation Ltd., Patna. Their sole grievance is that they were made to retire on attaining the age of 58 years though they would have been allowed to continue till they attained the age of 60 years. Reliance in this regard has been placed upon few orders of this Court wherein this court has held that after amendment in the Bihar Service Code enhancing the age of superannuation of employees of State Government from 58 years to 60 years, the employees of the Corporation ipso fact became entitled to extended age of superannuation with all necessary consequences.

In view of above, this writ application is disposed of in terms of order dated 17.8.2009 passed in CWJC No. 13398 of 2008 which was affirmed subsequently by this Court in LPA No. 214 of 2010 vide order dated 7.3.2011. The petitioners will be entitled for enhanced age of superannuation, i.e., 60 years and will be entitled for consequential benefits also."

6. The Corporation has filed the present review application seeking review of the aforesaid order dated 25.04.2014 on a very short issue. It is their case that admittedly Respondent No. 4 attained the age of superannuation of 58 years on

31.12.2009 and Respondent No. 5 attained the said age of 58 years on 31.01.2012. They were made to retire by the Corporation accordingly with effect from the dates they attained the age of superannuation, but they approached this Court, much thereafter in the year 2014, by filing above noted writ application, being CWJC No. 4303 of 2014 on 24.02.2014.

7. It is the plea of the review petitioners that the order under review was passed as the law laid down by the Supreme Court in case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, AIR 2007 SC 924 : (2007) 112 FLR 243 : (2006) 10 JT 500 : (2007) 2 LLJ 17 : (2006) 12 SCALE 347 : (2006) 11 SCC 464 : (2006) 8 SCR 916 Supp and subsequent decision of Supreme Court relying on the said decision, in case of Uttaranchal Pey Jal S.V.A.N. Nigam and Others Vs. Arvind Garg and Another, (2010) 126 FLR 557 : (2010) 1 SCALE 569 : (2010) 12 SCC 510 : (2011) 1 SCC(L&S) 159 could not be brought to the notice of this Court, wherein the Supreme has held that no relief of enhancement of age can be granted to an employee, who approaches the Court after his retirement.

8. After having seen that, prima facie, a case for review of the order of this Court dated 25.4.2014 was made out, while issuing notices to the respondents, by an order dated 11.2.2015, it was directed by this court that the effect of the said order dated 25.4.2014 shall remain in abeyance. Pursuant to the said notice, respondent Nos. 4 and 5 have entered appearance through learned counsel, by way of Vakalatnama.

9. I have heard learned counsel for the petitioners as well as learned counsel appearing on behalf of Respondent Nos. 4 and 5. There is absolutely no dispute about the fact that the respondent No. 1 attained the age of 58 years on 31.1.2009 and the respondent No. 2 on 31.12.2012. This is also not in dispute that the Managing Director of the Corporation by an order dated 25.4.2008 (Annexure-3 to the writ application) had made it clear that the employees of the Corporation shall be deemed to have retired from service on attaining the age of 58 years. Evidently, the petitioners were going to attain the age of 58 years, much after passing of the said order dated 25.4.2008. They however, did not approach this Court seeking benefits of enhanced age of superannuation, immediately, thereafter.

10. Referring to these admitted facts, Mr. P.K. Verma, learned Senior counsel appearing on behalf of review petitioners has relied upon the said decisions of the Supreme Court in case of U.P. Jal Nigam Vs. Jaswant Singh (supra) and Uttaranchal Pey Jal S.V.A.N. Nigam vs. Arvind Gard (supra), and has contended that order dated 25.04.2014 needs to be reviewed and recalled and the writ petition deserves to be dismissed.

11. Learned counsel appearing on behalf of the contesting Respondent Nos. 4 and 5, on the other hand, has submitted that no case for review of the order dated 25.4.2014 is made out as the points which are being raised by the Corporation in the review application were not earlier raised by them. He has

contended that this Court may review its order only if the order appears to be contrary to law on the face of it or there is apparent error on record. He has relied upon Supreme Court decision in case of Kamlesh Verma Vs. Mayawati and Others, (2013) 5 ABR 1267 : AIR 2013 SC 3301 : (2013) 4 CTC 882 : (2013) 4 RCR(Civil) 75 : (2013) 10 SCALE 113 : (2013) 8 SCC 320 : (2014) 1 SCC(L&S) 96 to submit that no review of an earlier order cannot be done unless the material error, manifest on the face of the order is found by the Court.

12. Mr. P.K. Verma, learned Senior Counsel appearing on behalf of the review petitioners appears to be right in his submission that the order of this Court dated 25.4.2014 was passed without noticing the binding Supreme Court decisions in case of U.P. Jal Nigam (supra) and Uttaranchal Pey Jal (supra).

13. The Supreme Court in case of U.P. Jal Nigam (supra), applying the principle of delay and laches in approaching High Court under Article 226 of the Constitution of India, in the matter of seeking benefits of enhanced age of superannuation held in paragraph 13 as follows:-

"13. In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the Court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

14. Relying on the said decision in case of U.P. Jal Nigam(supra), in a subsequent decision in case of Uttaranchal Pey Jal (supra), the Supreme Court held in paragraphs 3,4 and 5 as follows:-

"3. A similar issue came up for consideration of this Court in U.P. Jal Nigam V. Jaswant Singh wherein applying the doctrine of laches, it was held that no relief could be granted to the persons who had approached the Court after their retirement. Only those persons who had filed the writ petitions when they were in service or who had obtained interim orders for their retirement, could be allowed to benefit from the decision in Harwindra Kumar Case.

4. Pursuant to our order dated 26.10.2009, an affidavit has been filed by the Executive Engineer, Uttaranchal Pey Jal Nigam. In the said affidavit information with regard to the date of retirement of each of the respondents and date of their filing writ petition in the High Court, seeking parity in the age of retirement with the employees of the State Government has been furnished. As per the said statement, except for Lalit Mohan Pant, all the respondents had preferred the writ petitions much after their superannuation.

5. In view of the information so furnished, which is not disputed by the learned counsel for the respondents, we are of the opinion that in view of the decision of this Court in Jaswant Singh case 2 the decision of the High Court cannot be sustained. Accordingly, following the said decision, with which we are in respectful agreement, the appeals are allowed and the impugned orders are set aside leaving the parties to bear their own costs."

15. I am of the considered view that there is material error, manifest on the face of the order of this Court dated 25.4.2014 because the said decision of the Supreme Court in case of U.P. Jal Nigam (supra) and Uttaranchal Pey Jal (supra) was not brought to the notice of the Court. The error is self evident and I do not agree with the submissions made on behalf of Respondent Nos. 4 and 5 that the error is not apparent and can be detected only by a long process of reasoning. The facts are evident and not in dispute and the law which has been brought to my notice is also clear. There is no possibility of any other view, in the light of the law already laid down by the Supreme Court in case of U.P. Jal Nigam (supra) on the question of claim of benefit of enhanced age of superannuation, raised after attaining the age of superannuation.

16. In my view, there exists sufficient reasons to review the order dated 25.4.2014 as there is error apparent on the face of the order. The scope of review by a Court of law has been elaborately dealt with by Supreme Court in its decisions in case of Kamlesh Verma Vs. Mayawati (supra), wherein the principles of review has been summarized, noticing various judicial pronouncements. The present case, in my opinion, comes within the ambit and scope where jurisdiction of review of an order is to be exercised, in the facts and circumstances as noted above.

17. Accordingly, the order dated 25.04.2014 passed in CWJC No. 4303 of 2014 is recalled, in view of the law laid down by the Supreme Court decisions in case of U.P. Jal Nigam (supra) and Uttaranchal Pey Jal (supra). I find that there is no merit in CWJC No. 4303 of 2014, which is accordingly, dismissed.

18. Since the order of this Court dated 25.04.2014 has been recalled and CWJC No. 4303 of 2014 has been dismissed, MJC No. 3053 of 2014 alleging violation of the order of this Court dated 25.04.2014 passed in CWJC No. 4303 of 2014 stands dismissed.

19. In the result, Civil Review No. 348 of 2014 is allowed.

20. Parties shall bear their own costs.