
(2013) 05 PAT CK 0019

In the Patna High Court

Case No : LPA No. 1812 of 2012 in CWJC No. 13753 of 2012

Sheo Bansh Singh and Others

APPELLANT

Vs

The Bihar School Examination Board and Others

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) 3 PLJR 883

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Awadhesh Kumar Mishra, Satyendra Kumar and P.K. Neyogi, for the Appellant; Satyabir Bharti, for the Respondent

Judgement

R.M. Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent is preferred by the writ petitioners in CWJC No. 13753 of 2012 against the common judgment and order dated 15th October, 2012 passed by the learned single Judge insofar as CWJC No. 13753 of 2012 is dismissed. The appellants before us are the retired employees of the respondent Bihar School Examination Board (hereinafter referred to as "the Board"). On reaching the age of superannuation, the appellants retired from service prior to 23rd March, 2006 but after 9th August, 1999.

2. The State Government has, in exercise of power conferred by proviso to Article 309 of the Constitution, framed the Bihar State Employees Conditions of Service ("Assured Career Progression Scheme") Rules, 2003. Under the said rules, the State Government has approved Assured Career Progression Scheme (hereinafter referred to as "the ACP Scheme"). Under the ACP Scheme, the employees of the State Government are assured certain financial benefits on completion of specified years of service. The ACP Scheme has been made applicable with effect from 9th August, 1999.

3. The appellants claimed that since the Board has adopted the rules applicable to the Government servants, the employees of the Board shall also get the same

benefits as the Government servants.

4. The learned single Judge has rejected the contention. The learned single Judge has held that the Board has the authority to take its own decision and the employees of the Board cannot claim for parity with the employees of the State Government.

5. The Board has adopted the said ACP Scheme for its employees with effect from 23rd March, 2006. It further transpires that the Board has also decided that 9th August, 1999, the effective date of the ACP Scheme for the State Government employees, be adopted for computation of the benefit under the ACP Scheme to be extended from 23rd March, 2006. In other words, 9th August, 1999 is the date adopted for computing notional benefits whereas actual benefits have been extended with effect from 23rd March, 2006. In the result, those employees who retired on or after 9th August, 1999 but before 23rd March, 2006 would not be eligible for actual benefit as they were not in service on 23rd March, 2006. For such employees, a decision has been taken to extend the benefit from 23rd March, 2006 in respect of the terminal benefits. It is this decision of the Board which has given rise to the present litigation.

6. Learned Advocate Mr. Awadhesh Kumar Mishra has appeared for the appellants. He has relied upon the order dated 1st August, 2011 made by the Secretary, Bihar School Examination Board. Under the said order, a specific direction has been issued that for the employees who retired prior to 23rd March, 2006 but after 9th August, 1999 will be given notional benefit from 9th August, 1999 till 23rd March, 2006. The actual benefit from 23rd March, 2006 will be reflected in their terminal benefits. Mr. Mishra has submitted that the said order has been made by the Secretary of the Board without the authority of law. The said direction has been issued in contravention of the decision of the Board reflected in its resolution dated 18th November, 2008.

7. On perusal of the records, it does appear that the Board has altered its decision in respect of the implementation of the ACP Scheme from time to time. Ultimately it has culminated into actual benefit of ACP Scheme from 23rd March, 2006 and notional benefit thereof from 9th August, 1999 till 23rd March, 2006. Thus, the aforesaid policy appears to have been applied uniformly to all the employees of the Board.

8. We agree with the learned single Judge. The Board is an autonomous body governed by its own constitution. The Board has, in exercise of power conferred upon the Board, taken a conscious decision to implement the ACP Scheme in respect of the employees of the Board with effect from 23rd March, 2006. We cannot make any exception about it so long as the ACP Scheme adopted by the Board is uniformly applied to all the employees of the Board. If applied uniformly, the employees of the Board cannot have a legitimate grievance. The claim for parity with the employees of the State Government is *ex facie* unsustainable. For the aforesaid reasons, the Appeal is dismissed in limine.