
(2003) 06 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 2047 of 2003

Shri Niwas Dubey

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Bihar State Universities Act, 1976 — Section 67

Citation : (2003) 2 BLJR 1332 : (2003) 3 PLJR 279

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Jai Shankar Barnwal, Ram Balak Mahto, Uma Kant Shukla, for the Appellant; Azfar Hassan, SC VII, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The dispute in this case relates to the superannuation age of Class III employees of the Magadh University and its colleges.

2. The short facts of the case are that the petitioner was appointed as Cashier in T.P.S. College, Patna on 27-10-1976. He joined the post on 1-11-1976. On 5-2-2003 he was informed by Annexure-2 that he would be retiring from service on reaching the age of superannuation of 60 years on 28-2-2003. The case of the petitioner is that the superannuation age of non-teaching employees of the University/College appointed prior to coming into force of Bihar State Universities Act, 1976, vide Section 67 of the Act, is 62 years. His date of birth being 5-2-1943 he is entitled to continue in service upto February, 2005. His retirement with effect from 28-2-2003 is thus premature and illegal.

3. The stand of the University is that the superannuation age of non-teaching staff appointed prior to 16-8-1976 is 62 years whereas those appointed on or after 16-8-1976 (except inferior servants) are to retire on reaching the age of 60 years. As the petitioner was appointed on 27-10-1976/1-11-1976, his superannuation age would be 60 years and thus his date of birth being 5-2-1943,

he has rightly been retired on 28-2-2003.

4. Shri Uma Kant Shukla, learned Counsel for the petitioner submitted that proviso to Section 67 of the Bihar State Universities Act unambiguously lays down that the age of retirement of non-teaching employees in service of the University prior to the commencement of the Universities Act is 62 years. The Act came into force on 16-5-1977 and thus his appointment being prior to commencement of the Act, he cannot be retired before he attains the age of 62 years.

5. Considering the significance of the question Shri Ram Balak Mahto was requested to assist the Court as Amicus curiae and he accordingly took instruction from the Chancellor's Secretariat and made submissions. He submitted that the Bihar State Universities Act, 1976 and 16-8-1976 (Bihar Act 23/1976) was preceded by the Bihar State Universities Ordinance, 1976 (Bihar Ordinance No. 145/1976) and Bihar State. Universities Second Ordinance, 1976 (Bihar Ordinance No. 207/1976) published in the Bihar Gazette on 11-5-1976 respectively. What appears as Section 67 in 1976 Act was Section 63 of Bihar Ordinance No. 145/1976 and Section 67 of Bihar Ordinance No. 207/1976 with some modifications. They too provided that the retirement age of the non-teaching employees shall be 60 years but those appointed prior to the commencement of the Ordinance, will, retire on attaining the age of 62 years. The Ordinance was replaced by Bihar Act 23 of 1976 containing the same provision.

6. Section 67 of the Act, it appears, was amended in the meantime by Bihar Act 17 of 1993 but the age of retirement remained the same i.e. 62 years for those appointed prior to the commencement of the Act. Prior to the 1993 amendment, Section 67 had undergone yet another amendment in 1990 vide Bihar Ordinance 2/1990 replaced by Bihar Act 3/1990. The amendment in Section 67 was repealed by Bihar Ordinance 6/1993 and a new Clause (a) was substituted giving it retrospective effect. The said Ordinance was replaced by Bihar Ordinance 14/1993 and finally by Bihar Act 17 of 1993. Section 67 occurring in Ordinance 14/93 or Act 17/93 was different from the one in Ordinance 6/93 but the duality in the matter of superannuation continued as before. Indeed, since the beginning till today. What is significant is that Ordinance 14/93 and Act 17/93 referred to appointments made "prior to the commencement of the Bihar State Universities Act, 1976 (Bihar Act 23 of 1976)" which is continuing till date.

7. At this stage Section 67, as it now stands, may be quoted as under :--

67. Retirement from service.---(a) Notwithstanding anything to the contrary contained in any Act, Rules or any judgment or decree of a Court, the date of retirement of a teaching employee of the University or of a College shall be the date on which he attains the age of sixty years. The date of retirement of non-teaching employee (other than the inferior servants) shall be the date on which he attains the age of sixty years:

Provided that the date of retirement of such non-teaching employee, who is in the service of the University prior to the commencement of the Bihar State Universities Act, 1976 (Bihar Act 23, 1976) shall be the date on which he attains the age of sixty-two years.

Provided further....."

8. From a plain reading of the section it will appear that the date of retirement of non-teaching employees has to be reckoned with reference to the date of commencement of the Act. The date of commencement of the Act being 16-5-1977 it would appear that those appointed prior to that date would retire on attaining the age of 62 years. But as similar provision occurred in the Ordinance, namely Ordinance 145/76 and 207/76 for superannuation at the age of 62 years those appointed prior to the commencement of the Ordinance, i.e. 11-5-1976 or 16-8-1976, the question arises as to whether the clause "prior to the commencement of the Bihar State Universities Act, 1976" is referable to 16-5-1977 or 11-5-1976/16-8-1976.

9. The words "prior to the commencement of the Bihar State Universities Act, 1976 (Bihar Act 23 of 1976)" occurring in proviso to Section 67 of the Act, in my opinion leave no room for doubt that the date of commencement of the Act, and not the Ordinance, shall govern the superannuation of the concerned employees. The provision does not refer to "the Act" or "this Act" which is normally found in amending statutes. It mentions categorically appointments made prior to the commencement of Bihar Act 23 of 1976. It would follow that those appointed prior to 16-5-1977 which is the date of commencement of Bihar Act 23/76 shall superannuate at the age of 62 years.

10. In the above, premises, the impugned office order dated 5-2-2003 is set aside. The petitioner will be entitled to consequential benefits. The writ petition stands allowed.