
(2000) 08 PAT CK 0102
In the Patna High Court
Case No : C.W.J.C. No. 5732 of 2000

Shri Purushottam Jha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Citation : (2000) 4 PLJR 238

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

Bench : Single Bench

Advocate : Madan Mohan No. 1, for the Appellant; Jagannath Jha and Uma Kant Singh for Resp. No. 2, for the Respondent

Judgement

S.N. Jha, J.—The petitioner, a retired judicial officer and a member of the Bihar Judicial Service, has filed this writ petition seeking direction for finalization / payment of pension, gratuity and unutilized leave salary. The authority slips with respect to all the above three items have since been issued on 10.7.2000 and 20.7.2000 respectively. The grievance of the petitioner however is that the pension etc. have been fixed treating him to have superannuated from service on 31.12.93 whereas by virtue of the extension granted to him in the light of the judgment of the Supreme Court in the case of All India Judges' Association vs. Union of India, AIR 1993 SC 2493, he is entitled to reckon his date of superannuation as 31.7.95 when he attained the age of 60 years. It is said that age of judicial officers stands increased to 60 years by virtue of the aforesaid judgment of the Supreme Court, and as the petitioner admittedly attained the age of 60 years on 31.7.95, he cannot be treated as having retired from an earlier date.

2. The respondents do not deny that the age of superannuation of judicial officers stands increased to 60 years. In fact in terms of the aforesaid judgment of the Supreme Court the petitioner was also given the benefit of the enhanced superannuation age. However on 15.9.93 the petitioner applied for voluntary retirement with effect from 31.12.93 which was allowed vide letter no. 1952

dated 23.2.98 of the Personnel and Administrative Reforms Department, Government of Bihar and the petitioner has thus been treated as having retired from 31.12.93. The fact that the petitioner applied for voluntary retirement is not in dispute. In fact counsel for the petitioner submitted in course of hearing that after the petitioner was placed under suspension pending departmental enquiry on 30.8.93, in frustration, he opted to take voluntary retirement. He however submitted that as decision in this regard was taken by the State Government only on 23.2.98 he cannot be treated as having retired from 31.12.93, that is to say, the order dated 23.2.98 cannot be applied retrospectively.

3. The material facts in this case, it would appear, are not in dispute. The only point is whether the petitioner should be treated as having superannuated with effect from 31.12.93 or 30.6.95. The judgment of the Supreme Court in *All India Judges' Association case* (supra) which is the sheet anchor of the petitioner's case provides answer to the point. Before noticing the relevant observations from the judgment it is proper to state that the benefit of the increased age of superannuation is not available to the Judicial Officers automatically, it is subject to evaluation of his "potential for continued useful service" by a committee of Judges of the High Court. Such evaluation was/is to be made of judicial officers who have crossed the age of 57 years and exercised their option for the same within the stipulated period. Such judicial officers who had already crossed the age of 58 years when judgment was delivered on 24.8.93 were deemed to have exercised the option in favour of the enhanced age of superannuation. That is how the petitioner was allowed the benefit of the extended superannuation age. In the ordinary course having crossed the age of 58 years on 31.7.93 he would have retired from service on 1.8.93. The extension was thus not on merit but by virtue of deeming clause as envisaged in the Supreme Court judgment.

4. At this stage the relevant observations of the Supreme Court may be noticed. While directing that enhanced superannuation age would be given to the judicial officers after evaluation of their potential of continuing in service, the Court observed:-

It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules.

The enhancement of the superannuation age to 60 years coupled with the provision for compulsory retirement at the age of 58 years does introduce a change in service condition of the existing personnel. There may be judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition of compulsory retirement and may like to opt for retirement at the age of 58 years. In such cases, the concerned officers should intimate in writing their desire to retire at the age of 58 years well in advance and in any case before they attain the age of 57 years. Those who do

not do so will be deemed to have exercised their option to continue in service till they attain 60 years of age subject to the liability of being retired compulsory at the age of 58 years according to the procedure for compulsory retirement laid down in the Service Rules.

From the above observations it is clear that notwithstanding the extension of superannuation age, from 58 to 60 years, a judicial officer is liable to be compulsory retired in terms of the provisions of the relevant service Rules. A priori it would follow that he can also apply for voluntary retirement during such extended period. In other words, while he can be compulsory retired notwithstanding the grant of benefit of extended retirement age, he can also opt for voluntary retirement. This is what the petitioner did in the present case. He cannot be allowed to take a different stand merely because the Government took time to examine the request. It is well known that no government servant can claim voluntary retirement as of right. It is an offer which may or may not be accepted by the Government. Thus if some time was consumed in the process it cannot be said that the petitioner would continue to be in service even after the date with effect from which he wanted to voluntarily retire. The petitioner having opted for voluntary retirement with effect from 31.12.93, I do not find any mistake on the part of the respondents in finalisation of his retrial dues treating him to have retired from that date. The contention in this regard is therefore rejected. The relief sought for in the writ petition having already been granted, as mentioned at the outset, the writ petition stands disposed of.