
(2007) 03 PAT CK 0168
In the Patna High Court
Case No : CWJC No. 9512 of 2005

Shyam Kishore Dwivedi and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Citation : (2007) PLJR 366

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. R.J. Maharaj for the petitioners, and Mr. Rajesh Kumar Singh, learned JC to Additional Advocate General II, for the respondents. Two petitioners have joined this writ petition seeking a direction to the respondent authorities to allow them to continue in the services of the Bihar Government till they attain the age of 60 years. The respondents have placed on record their counter affidavit and have opposed the writ petition. I have perused the materials on record and considered the submissions of learned counsel for the parties. On their own showing, petitioner No.1 was born on 8.12.1946, and, therefore, completed the age of 58 years on 8.12.2004. Petitioner No. 2 was born on 6.9.1946, and accordingly completed the age of 58 years on 6.9.2004. By Government Resolution No. 1500 Patna, dated 24.3.2005 (Annexure 3), issued by the Government of Bihar in the Finance Department, the State Government has extended the age of superannuation of its employees from 58 years to 60 years, clause-6 whereof says that "yeh aadesh tatkaalik prabhav se laagu hoga" (in Hindi). It is thus manifest that this resolution is prospectively enforceable. The petitioners have already superannuated on completion of age of 58 years before the resolution was enforced.

2. I had the occasion to deal with an identical issue in CWJC No. 6200 of 2005 Reported at Pg. 369 of this volume (Bal Govind Prasad & Another vs. State of Bihar), which has been dismissed by order dated 26.2.2007 with the following

observations:--

".....Law is well settled that fixation of age of retirement is an executive function and the Court should desist from interference with the same so long it does not violate the constitutional norms. No such case has been made out by the petitioners.

Selection of a date for enforcement of a policy decision or an action taken is subject to judicial scrutiny under limited circumstances, and surely not if it is not discriminatory or arbitrary. A date has after all to be fixed for commencement or enforcement of a legislation or a policy decision. Even if no particular reason is forthcoming for the choice of date unless it is shown to be capricious or whimsical, the choice of the legislature must be accepted. If that were not so, it will not be possible to enforce a legislation or a policy decision at all. Reference may be made to the judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, of which is reproduced hereinbelow:

"The choice of a date as a basis for classification can always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances, when it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide off reasonable mark."

3. No case has been made out by the present petitioners that Annexure-3 violates any constitutional norm, or it violates the equality clause, or is arbitrary, capricious or whimsical. In that view of the matter, I do not find any merit in this writ petition. It is accordingly dismissed.