

(2007) 08 PAT CK 0046
In the Patna High Court
Case No : CWJC No. 10551 of 2006

Shyam Kishore Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 66(B), 66B
Constitution of India, 1950 — Article 14, 20(2)

Citation : (2007) 3 PLJR 830

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : R.B. Mahto, Banwari Sharma, Ram Janam Prasad, Shiv Kumar, Arvind Kumar and Awadh Nandan Prasad, S.N. Pathak, for the Appellant; G.K. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—In all these three writ applications petitioners are former employees of Bihar State Co-operative Bank, Patna. They are aggrieved because by virtue of order dated 5.8.2006 two petitioners, namely, Shyam Kishore Sinha and Mr. Syed Akhtar Hussain in C.W.J.C. No. 10551 of 2006 and C.W.J.C. No. 10239 of 2006 respectively have been retired at the age of 58 years and Gajendra Nath Rai petitioner in C.W.J.C. No. 1521 of 2007 has faced a similar action by an order dated 18.12.2006. These orders are impugned and annexed in these writ applications as annexures-4, 11 and 3 respectively. The reason why these orders came to be issued or passed against the petitioners is the communication issued at the level of Secretary, Department of Co-operative, Government of Bihar which is dated 15.5.2006. The Secretary, while exercising his powers u/s 66B of the Bihar Co-operative Societies Act issued a communication to all Cooperative Societies. This communication came to be issued in the background that demands had been made by employees of a large number of Co operative Societies that their age of superannuation should also be enhanced to 60 years to bring parity with the State Government employees. The

matter was considered at the level of Government and keeping in view the ground reality and financial conditions of Co-operative Societies under the State a policy decision in this regard was taken and communicated by the Secretary of Department of Co-operative u/s 66B exercising his powers under Co operative Societies Act. 15.5.2006 order states that the Government in principle has agreed to enhance the age of retirement of employees of Co-operative Societies but it was subject to certain conditions laid down therein. These conditions are stated in paragraph Ka 1 to 5 which is as follows:

2. No doubt by an earlier order dated 31.5.2005 the Registrar, Co-operative Societies had allowed enhancement in the age of retirement of employees working under respondent-Bank. But the order dated 15.5.2006 issued by the Secretary stated that the earlier approval granted by the Registrar enhancing the age of retirement would be deemed to be amended to the extent indicated therein.

3. Based on the order and directive of the Secretary, the management of the bank reviewed the cases of these three petitioners and found that their cases fall within the mischief of Clause 4 of Ka as noted above. The management in the impugned orders states that since these petitioners had suffered punishment at one point of time or other therefore in terms of Clause 4 they could not be given benefit of retiring at 60 years. These petitioners were ordered to be retired on reaching the age of 58 years. Petitioners, therefore have challenged not only this decision of management but have also challenged the legal validity of the Secretary's order dated 15.5.2006. In fact, the ire of the petitioners is directed more towards Clause 4 of Ka. This Clause states that those employees who have suffered punishment due to embezzlement, corruption, indiscipline, incompetence or forgery would be kept out of benefit of enhanced age of retirement.

4. It is important to take note of the brief background which has been indicated in the impugned orders which had led to passing of the orders in question. Sri Shyam Kishore Sinha was working as S.O. in the bank and in the year 1994 for the charge of fraudulent withdrawal of money through false T.A. bills punishment of stoppage of one increment with non-cumulative effect was imposed on 1.3.1994. Petitioner in C.W.J.C. No. 10239 of 2006, namely Syed Akhtar Hussain an A.G.M. rank officer acting as Deputy General Manager was awarded punishment of stoppage of one increment with cumulative effect. This punishment was imposed on 2.2.87. The charges were fraudulent withdrawal of money on false bill, unauthorised absence, unauthorised closure of regional office at Muzaffarpur and unauthorised appointment of peons at Gol Muri Branch Mr. Gajendra Nath Rai petitioner in C.W.J.C. No. 1521 of 2007 was also punished in the year, 1994. The punishment was again stoppage of one increment with non-cumulative effect on the charge of fraudulent withdrawal of money through false T.A. bills.

5. From the narration above one thing is apparent that whatever the charges,

based on the evidence, findings and in the wisdom of the disciplinary authority stoppage of increment was considered sufficient punishment. Thereafter they have been allowed to serve the bank. Now this punishment is being raked up after more than 12 years in case of two petitioners and 19 years in case of one petitioner. These punishments are therefore held out against the petitioners for the reasons why they could not be given benefit of enhanced age of retirement.

6. Learned Counsel for the petitioners therefore assail the decision of the management as well as the directive of the Secretary, on various grounds. They urge that the decision as well as the directive contained in Clause 4 of Para Ka is violative of Articles 14 and 20(2) of the Constitution of India. They further submit that Clause-4 covers the area which falls within the domain of disciplinary action. Since there are already service regulation in place which governs the same it cannot be replaced by introducing such a Clause under the purported exercise of power u/s 66(B) of the Bihar Co-operative Societies Act. Clause 4 cannot be considered to have a overriding effect over the service regulation. Alternative, argument is that unless the corresponding changes in the service regulation is brought about Clause-4 cannot be used to deny the benefit of enhanced age of retirement to an employee.

7. Another contention of the petitioners are that there cannot be two service conditions for the same set of employees working under an organisation. If it is so then it is violative of Article 14 of the Constitution of India. Yet another submission on behalf of the petitioners are that since the Registrar, Co-operative Societies while exercising his power u/s 66B of the Act had already approved and allowed enhancement in the age of retirement of employees of the Co-operative Bank by virtue of order and communication dated 31.5.2005 the same cannot be undone by Secretary in absence of any decision of the management in this regard having been communicated to the authority. They also submit that since the benefit of enhanced age of retirement have already accrued to the employees, based on the decision of the Registrar, Co-operative Societies on 31.5.2005 the same cannot be undone unilaterally.

8. The stand of the respondent-Bank in the present case is that the action is based on directive of the Secretary of the Department in question which is dated 15.5.2006. Since the said directive has a binding effect on all the Co-operative Societies u/s 66B of the Act. therefore the order impugned passed against the petitioners has sanctity of law. They reiterate that the service records of these petitioners were examined and since they had suffered punishment after departmental enquiry they cannot be given the benefit of enhanced age of retirement in terms of Clause 4 of Para Ka of the directive of the Secretary. They further submit that the validity of Section 66B of the Act have been tested earlier in various litigations when the concerned amendment was incorporated in the Act. The same has with stood judicial scrutiny If that be so then the action of the respondents cannot be faulted.

9. Even the respondent-State have filed their counter affidavit and they have

taken a similar stand as that of respondent-Bank. They have also indicated that the order of the Secretary dated 15.5.2006 has been issued after due deliberation and concerted decision keeping in mind the present condition of various Co-operative Societies which are in existence in the State. The direction of the Secretary is therefore in the interest of Societies for their betterment.

10. this Court at the very outset would like to record that the State of Bihar acting either through the Registrar or the Secretary, Department of Co-operative Societies have the legal and valid authority to issue directive. This directive has a statutory status and to that extent binding on various Co-operative Societies registered in the State of Bihar. However, keeping in mind that the Court had already upheld the validity of Section 66B of the Act earlier, there is no occasion for this Court now to test its validity as such.

11. There are however some other issues which require consideration. Some of the submissions which have been made on behalf of petitioners and also taken note of in the earlier-paragraphs of this order do have some force. The accepted position is that all these three petitioners have already suffered punishment for their acts of omission and commissions many years ago. Once punished by the competent authority for the charges, they cannot be punished twice for the same set of charge by forcing them to retire at the age of 58 years. To that extent petitioners are correct in their submission that the guarantee and protection which has been given under Constitution of India under Article 20(2) has been violated. Perusal of the impugned orders would clearly show that petitioners are being retired at the age of 58 years because their service book reflect punishment imposed earlier.

12. this Court is also in agreement with the contention of petitioners that Clause-4 of Para Ka cannot have the force of overriding effect and replace the rules/regulations which grants disciplinary powers to the employers. Since there are codified statutory regulation which governs the act of omission and commission of employee, the same cannot be deemed to have been replaced by Clause-4. In absence of amendment in service regulations incorporating this "punishment" as a penalty the order of Secretary cannot be permitted to have a pervasive effect in this area.

13. this Court can also take note of the fact that every service regulation or rules carry provision for compulsory retirement. This power have been given to employers to weed out dead wood or notorious employees. If the power already exists then where is the occasion of creating yet another clause of punishment by forcing an employee to retire at 58 years of age merely because in some distant past he had suffered some punishment. this Court is constrained to note that in all these three cases the punishment was stoppage of one increment without cumulative effect in case of two petitioners and with cumulative effect with regard to one petitioner. The inference therefore from the order of punishment is that the charges were not proved which required a higher and more deterrent punishment. In totality the punishment which the petitioners had suffered in this

regard earlier does not compel this Court to hold that such punishment can be used or be made a basis for denying enhanced age of retirement to the employees of the bank.

14. this Court is already in agreement with the submission of the petitioners that unless corresponding change is brought in the service regulation or rules, Clause 4 cannot have a overriding effect. Further in matters of superannuation of employees there cannot be two separate age of retirement as such. There ought to be uniformity in age of retirement of employees. In fact, this Court has no hesitation in recording that there was no occasion to incorporate Clause 4 when provisions for compulsory retirement exist on statute body. Merely because the authorities are not willing to invoke such provisions which are already in existence it does not mean that the provision as envisaged under Clause 4 can be incorporated in complete supersession or by giving a go-by to the service regulations.

15. In totality, therefore, this Court is of the opinion that Clause 4 of Para Ka of the order of the Secretary, Department of Co-operative, Government of Bihar dated 15.5.2006 is violative of Articles 14 & 20(2) of the Constitution of India. In fact, this Court also feels that Clause 4 is excessive exercise of the authority. The same is accordingly struck down.

16. In this given situation and legal position, this Court has no hesitation in holding that the management of the bank has arbitrarily ordered the petitioners to retire at the age of 58 years. The orders therefore dated 5.8.2006 as well as 18.12.2006 are hereby set aside. The respondent-Bank is directed to reinstate the petitioners in service and they shall be allowed to continue as such till they reach the age of 60 years. Needless to say that the petitioners shall be entitled to all benefits by virtue of such reinstatement. These writ applications accordingly stand allowed. There would be however no order as to cost.