

(1996) 03 CAL CK 0042
In the Calcutta High Court

Case No : Appeal from Original Order Tender No. 2516 of 1991

State of West Bengal

APPELLANT

Vs

Wali Ahmed

RESPONDENT

Date of Decision : 20-03-1996

Acts Referred:

Citation : (1998) 1 ILR (Cal) 93

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakraborty, J

Bench : Division Bench

Advocate : Debjani Sengupta, for the Appellant; Sadhan Roy Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated February 12, 1991 passed by Mahitosh Majumder J. in C.O. No. 16273 (W) of 1988, whereby and whereunder the said learned Court allowed the writ application filed by the writ Petitioner.

2. Originally, the writ-Petitioner was an employee of the State of Bihar. On transfer of territories of the then Manbhum District in the year 1956, the original writ-Petitioner became an employee of the State of West Bengal in terms of the provisions of Bihar and West Bengal Transfer of Territories Act, 1956. In terms of Sub-section (1) of Section 41 of the said Act, all employees who immediately before the appointed day was serving in connection with the affairs of Bihar shall as from that day, continue so to serve, unless he was required by general or special order of the Central Government to serve provisionally in connection with the affairs of West Bengal. The proviso appended to Sub-section (4) of Section 41 postulates that the condition of service applicable immediately before the appointed day to the case of any person provisionally or finally allotted to West Bengal under this section shall not be varied to his disadvantage except with the previous approval of the Central Government. It is not disputed that the age of retirement of the original writ-Petitioner was 60 years while he had been serving

under the State of Bihar. Such age of retirement so far as the employees of the State of West Bengal are concerned is 58. This Court has consistently held that in absence of any order passed by the Central Government in terms of proviso appended to Sub-section (4) of Section 42 of the said Act the age of superannuation of the such employees would be 60 and not 58.

3. Ms Sengupta, the learned Counsel appearing on behalf of the State-Appellant raised two contentions in support of this appeal. The learned Counsel has drawn our attention to two notifications issued by the State of Bihar; one dated September 22, 1972 and another dated January 11, 1963 and submits on the basis thereof that from a perusal thereof it would appear that the age of retirement of the employees other than ministerial staff had been raised from 55 to 58 in the State of Bihar also. The learned Counsel, therefore, contends that it must be held that the original writ-Petitioner was to retire on attaining the age of 58. Our attention has also been drawn to Section 42 of the said Act which reads thus:

42. Every person who immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of Bihar in any area within the transferred territories shall continue to hold the same post or office in West Bengal, and shall be deemed as from that day to have been duly appointed to that post or office by the Government of, or other appropriate authority in West Bengal:

Provided that nothing in this section shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office shall have effect accordingly.

According to the learned Counsel, in terms of proviso appended to Section 42 of the said Act, therefore, a competent authority was entitled to pass any order affecting his continuance in such post or office accordingly. Section 41 deals with provisions relating to service; whereas Section 42 deals with posting of the concerned employee. The said provisions, therefore, operate in two different fields. In any event, as proviso appended to Sub-section (4) of Section 41 conferred a right upon the Petitioner to the effect that no order shall be passed to his disadvantage except with the previous approval of the Central Government, he could not have been deprived therefrom by reason of an order passed by the competent authority. So far as the submission of Ms Sengunta to the effect that even in the State of Bihar subsequently, the age of retirement was fixed at the age of 58 is concerned, we are of the opinion that apart from the fact that all the latest notifications having not been brought to our notice the same cannot be accepted but even assuming that the contention of the learned Counsel is correct the said notification shall have no application in connection with the matter of the Petitioner inasmuch as he was not an employee under the Bihar Government in 1963 and/or 1972 when the said notifications were issued, as the terms and conditions of the service of the writ Petitioner would be

governed as was existing on the appointed day namely when the aforementioned Bihar and West Bengal Transfer of Territories Act, 1965 came into force. The crucial date is the appointed day under the said Act and not any date subsequent thereto. Moreover, the original writ-Petitioner had already retired and subsequently died. He completed the age of 60 years while in service by reason of an interim order passed in his favour in the aforementioned C.O. No. 16273 (W) of 1988. In that view of the matter, in our opinion, the heirs and legal representatives of the writ-Petitioner are only entitled to the retiral benefits which becomes payable to him.

4. For the reason aforementioned, there is no merit in this appeal and it is accordingly dismissed. The Appellants are hereby directed to expedite the payment of due retiral benefit to the heirs and legal representative of the original writ-Petitioner who have been added as Respondents in this appeal. We hope and trust that such retiral benefits shall be paid at an early date and preferably within a period of three months from the date of communication of this order.

5. There will be no order as to costs.

Satya Narayan Chakraborty, J.

6. I agree.