

(2008) 08 PAT CK 0055
In the Patna High Court
Case No : CWJC No. 16336 of 2006

Subas Chandra Ghosh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Citation : (2009) 2 PLJR 432

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Umesh Pd. Singh and Kumar Madhurendu, for the Appellant;
Vindhya Keshari Kumar, Ishwari Singh for the Respondent Nos. 6 and 7 and Ms.
Nutan Sharma, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for the petitioner, learned counsel for the respondents and learned counsel for the State. All these petitioners have been made to superannuate on reaching the age of 58 years. They are permanent employees of Gandak Command Area Development Agency located at Muzaffarpur. The primary contention against the decision of the respondents to retire them at 58 years is that vide a resolution and a decision taken by the State of Bihar in March 2005 coupled with corresponding amendment in Rule 73 of the Bihar Service Code, the age of retirement" of employees of the State Government was enhanced to 60 years. These petitioners are also entitled to a similar benefit because the agency when it was created adopted a resolution that till such rules and regulations are put in place, the employees of the respondents would be governed by the Bihar Service Code and such related rules which are applicable to the employees of the State Government.

2. It is not in dispute that despite many a decades the respondents have not been able to put their service regulations and rules in place and the affairs of the respondents have been carried on based on the initial resolution of the Board of Directors adopting the Bihar Service Code as the guiding rule in this regard.

3. All has not been well with this organization or similarly situated agencies because even the Board of Directors have not been in place for many a years when the resolution enhancing the age of retirement of the employees of the State Government was taken. Some writ applications came to be filed before this Court demanding extension of this benefit to them. Since the agency was not in a position to decide or accept the enhancement in absence of the Board of Directors, in a contempt application a direction was issued both upon the State Government as well as the various Command Development Agencies to take a decision on the issue of enhancement of age of their employees based on such development. The Board of Directors were put in place and thereafter a decision has been taken by them to enhance the age of retirement to these employees to 60 years. But, there is a hitch and a rider in the decision taken by the respondents. The enhanced age in principle has been made applicable from the date when the Board of Directors have resolved to this effect i.e. 20.4.2007. In other words, a decision to enhance the age is prospective in nature and does not cover such employees who have retired in the meanwhile i.e. from the date the State Government took a resolution in March 2005 till 20.4.2007.

4. The petitioners have thereafter challenged this decision of the respondents to extend the benefit to only these employees who continued to be in service after the date of the decision of the Board of Directors.

5. Learned Senior Counsel appearing on behalf of the petitioners submits that this decision cannot be sustained because it is per se arbitrary. The benefit of enhanced age of retirement to the employees of the Command Area is being extended based on a decision taken by the State Government as well as the corresponding amendment in Rule 73 of the Bihar Service Code. It is not in dispute that the agency as a policy has not decided to increase the age of retirement of its employees on its own. If this is the situation and also keeping in mind that at the time of constitution of this Command Area Agencies, they had resolved to make applicable the Bihar Service Code and other related rules applicable to their re-employees, it is not open to them now to state that the benefit shall accrue only from the date the Board of Directors resolved in this regard.

6. In a similar kind of dispute and issue, the matter had traveled to a Division Bench of this Court, against various orders passed by learned Single Judges in this regard. In the case of Lala Nand Kumar Vs. The Bihar State Food and Civil Supplies Corporation Ltd. and Others and The State of Bihar and Others, the Division Bench was emphatic in holding that the benefit of amended rule, enhancing the age of retirement, in similar kind of situation, and a resolution to make it applicable to the Corporation was found to be the guiding factor in extending the benefit of retirement to the employees of the Corporation. The Division Bench in its opinion was categorical that the benefit of enhanced age has to be extended in light of the amendment to Rule 73 of the Bihar Service Code.

7. If this is the position in law then the enhanced age of retirement of these

petitioners will also relate back to the initial decision taken by the State Government in this regard way back in 24th March, 2005 itself and can never correlate to the date when the Board of Directors took a decision in their wisdom. This Court, further records that merely because mechanism was not in place for the respondents to take a decision in this matter and there has been delay in taking a decision, a right which had accrued to these petitioners cannot be taken away on the ground that a decision in this regard can only be prospective, based on from the date of resolution of the Board of Directors.

8. All the writ applications are allowed with a direction that if the petitioners have not reached the age of 60 years they shall be allowed to rejoin on their duty and they shall be allowed to continue on the post till they reach the age of 60 years. It is also clarified that in case some petitioners have already reached the age of superannuation then even in their case they shall be entitled to claim their salary and other benefits which was accruable to them as if they were in service till they reached the age of 60 years.

9. It is certified that principle of no work no pay is not applicable in such a situation because the petitioners had been kept away from work by an indecision or a decision taken by the respondents at a belated stage.

10. If there are any orders by virtue of which these petitioners were made to retire on reaching the age of 58 years they shall be deemed to be quashed. In view of the reasons stated in the earlier part of the order, all the writ applications are allowed.