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**(2003) 02 JH CK 0052**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 2885 of 1994 (R)**

Uma Shankar Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 05-02-2003

**Acts Referred:**

Bihar and Orissa Co-operative Societies Act, 1935 — Section 66B, 66B(1)  
Constitution of India, 1950 — Article 12, 226

**Citation :** (2003) 2 JCR 140

**Hon'ble Judges :** Tapen Sen, J

**Bench :** Single Bench

**Advocate :** Sumir Prasad and Saurav Arun, for the Appellant; Indrani Sen Choudhary and M.M. Banerjee and Indrajit Sinha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Tapen Sen, J.—In this writ Application, the petitioner prays for quashing the order dated 01.02.1994 as contained at Annexure I. whereby the State Government in exercise of powers u/s 66-B of the Bihar and Orissa Cooperative Societies Act, 1935 reduced the age of retirement of all employees of the Central Cooperative Bank from 60 years to 58 years. The Petitioner further prays for quashing the order dated 13.05.1994 (Annexure 5) by which a notice was given to him to the effect that he would be completing the age of 58 years on 02.11.1994 and therefore he would be superannuating with effect from 30.11.1994. The Petitioner has further prayed that the Respondents be restrained from giving effect to the aforementioned two orders.

2. According to the petitioner, he was appointed as a Head Clerk cum-Accountant in the Bank on 05.06.1963 and was promoted some time in August, 1987 on the post of Administrative Officer. It has further been contended by the Petitioner that the Central Cooperative Bank, Dhanbad is a Society registered under the Societies Registration Act and it has framed its own regulations known as Staff Regulations with the approval of the Board of Directors. They have further

contended that this bank is not a "State" within the meaning of Article 12 of the Constitution of India and power for framing of service conditions is vested exclusively with the Board of Directors. The Staff Regulations framed and which received the approval of the Board of Directors some time in the year 1965 makes 60 years as the age of superannuation. Therefore, according to the Petitioner and as per the Staff Regulations, he is to superannuate on attaining the age of 60 years and not 58 years. The Petitioner has further contended that in the year 1982 an amendment was made by which Section 66B was inserted and which lays down that the State Government was empowered either by special or general order to determine the nature and number of posts to be created and the mode of recruitment of personnel by Cooperative Societies. The Petitioner contended that, however, Section 66-B does not say anything other than recruitment of employees and therefore according to the petitioner, the provisions of Section 66-B(1) is merely directory and not mandatory.

3. The petitioner further states that on 01.02.1994 the State Government illegally issued a direction (Annexure 1) wherein in purported exercise of powers u/s 66-B, the age of retirement was reduced from 60 years to 58 years.

4. The Petitioner has stated that the aforementioned letter as contained at Annexure 1 was placed before the Board of Directors and the said Board of Directors in their meeting held on 07.04,1994 resolved (by Annexure 2) that the Service Regulations contemplated/referred to in Annexure 1 was approved except that clause which sought to reduce the age of superannuation from 60 years to 58 years and they further resolved that the Government be requested that the age of retirement be allowed to remain at 60 years. The Petitioner has further stated that the resolution was sent to the Government for approval, but by letter as contained at Annexure 3 being letter dated 22.08.1994, the Government refused to consider the said request and stated that for all Central Cooperative Banks the age of superannuation was fixed at 58 years and therefore there should be no separate criteria for the Central Co-operative Bank at Dhanbad. Thereafter on 16.05.1994 by Annexure 4 the Board of Directors of the Central Cooperative Bank, Dhanbad once again requested the Secretary, Department of Cooperation to reconsider the matter, but nothing happened and in the meantime, in compliance of the direction of the State Government as contained at Annexure 1, the Petitioner was given notice by Annexure 5 that he would be superannuating on and from 30.11.1994 upon attaining the age of 58 years on 02.11.1994.

5. According to the Petitioner, the decision of the State Government u/s 66-B cannot be said to be mandatory in nature and it is not binding on the Cooperative Societies since the Bank is a registered Society having its own bye-laws and Service Regulations having been framed in the year 1965 making 60 years as age of superannuation and which has not been reduced till now.

6. A Counter Affidavit in the instant case has been filed by the respondent Nos. 2 and 3 (Secretary Department of Cooperation and Joint Secretary, Department of

Cooperation) in which it has been stated that the employees of Central Cooperative Banks through their Union were demanding to frame a common Service Regulation and other service conditions and therefore a three men committee headed by the erstwhile Administrator of the Bihar State Cooperative Bank, namely, Shri Amitava Verma was constituted by the Government to make recommendations in respect of pay scales and other facilities as well as service conditions. Consequently and upon such recommendations having been made by the said Committee, a common Service Regulation for all employees of all Central Cooperative Banks was framed vide letter dated 01.02.1994 (Annexure 1) and Rule 21 thereto stipulated that an employee shall retire on attaining the age of 58 years. It has further been stated In the Counter Affidavit that a common pay scale and other facilities were approved by order dated 04.11.1994 on the basis of the recommendations as contained at Annexure "A" to the Counter Affidavit.

7. According to these respondents, the earlier age of retirement for employees of Central Cooperative Banks, Dhanbad as approved by its management was 60 years and the Board of Directors of the Bank had requested the State Government that It should allow its employees to continue till the age of 60 years which was subsequently turned down by the State and therefore according to these respondents, no relief should be granted to the Writ Petitioner. They have further stated that Section 66-B authorizes the State Government to determine and prescribe amongst other things Conditions of Service. Section 66-B reads as follows :--

"66B. (1) Notwithstanding anything contained in this Act or the rules and bye-laws made thereunder, the State government may, from time to time, by special or general order, determine the nature and number of posts to be created and the mode of recruitment of personnel by Co-operative Societies and prescribe among other things-

[(2) Any appointment made in contravention of the order of the State Government under Sub-section (1) shall be void as if no such appointment ever existed and salary and other allowances paid if any, shall be recoverable u/s 40]

- (1) the qualifications, age and experience,
- (2) the pay scale and other emoluments,
- (3) the method of recruitment,
- (4) the conditions of service, and
- (5) the disciplinary procedure to be followed."

8. Mrs. Indrani Sen Choudhary, learned counsel appearing for the State-Respondents has submitted that this Writ Application is fit to be rejected on various grounds. She has firstly submitted that the nature of relief that the Petitioner seeks is in the nature of a sweeping order which would affect all

employees. This cannot be done at the sole instance of the Petitioner when others have chosen not to file any Writ Application. She further submits that Section 66-B(2)(4) clearly lays down and authorizes the Government to determine and prescribe amongst other things the Conditions of Service.

9. There is sufficient force in what the learned counsel has submitted. This Court Section 66-B renumbered as Section 66-B(i). also comes to the conclusion that upon a plain reading of Section 66-B, the State Government has the right to determine and prescribe, amongst other things, the Conditions of Service of employees. In that view of the matter the argument of the learned counsel for the Petitioner to the effect that Section 66-B is merely directory and it does not authorizes the Government to reduce the age from 60 years to 58 years is rejected.

10. In a Judgment passed by a Division Bench of the Patna High court in the case of Md. Ali v. State of Bihar and Ors., reported in 1991 (1) BLJ 72 it was held after considering the provisions of Section 66-B that :--

"In view of Section 66-B of the Act the State Government may from time to time by special or general order prescribe among other things the Conditions of Service of the employees of the different Cooperative Societies."

11. In so far as the argument of the learned counsel for the Petitioner to the effect that the Bank is not a State within the meaning of Article 12 of the Constitution of India is concerned, reference may be made to a Judgment in the case of Ajay Kumar Mishra and Others Vs. The Registrar, Co-operative Societies and Others, wherein it has inter alia been held that Section 66-B were inserted in the Act by an amendment in the year 1989 by which certain class of societies did qualify as State within the meaning of Article 12 of the Constitution of India. It has further been held that prior to amendment Act however, the societies were not so and accordingly a Writ would not lie.

12. In the instant case, therefore and as has already been held that after the 1989 the Government did have the power to determine and prescribe, among other things, the service conditions as per the provisions of Section 66-B(2) and therefore after 1989 such Cooperative Societies can qualify as State. Therefore on either of the aforementioned two points raised by the learned counsel for the Petitioner, this Court cannot grant any relief.

13. For the reasons aforesaid, this Court does not find any infirmity with the impugned order and that too when the Board of Directors themselves having made a request to the State Government to reconsider and the State Government having considered the same, had rejected the request vide Annexure 3. There is nothing on record to suggest that thereafter the Board of Directors challenged the order of the State Government.

The Writ Application is therefore accordingly dismissed.