
(2002) 12 JH CK 0022
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2620 of 2002

Venudhar Mahanti

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Bihar Service Code, 1952 — Rule 54, 73

Citation : (2003) 1 JCR 320

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : N.P. Singh, for the Appellant; S.C.I., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner has challenged the order contained in Memo No. 52 dated 11th February, 2002 whereby and whereunder it has been ordered to retire the petitioner w.e.f. 31st January, 2002 having completed 40 years of service.

2. Admittedly, no rule/guide line has been prescribed by the State for superannuation of a Government employee on completion of 40 years of service. The age of superannuation has been prescribed under Rule 73 of the Bihar Service Code in terms of which a person stands retired on attaining 58 years of age. There is nothing on the record to suggest that any rule or guide line was in vogue prescribing minimum age of 18 years when the petitioner was appointed on 1st February, 1962.

3. Similar case fell for consideration before the Patna High Court in Mokhtar Ahmad v. B.S.R.T.C., reported in 1995 (I) BLJR 183. The Patna High Court taking into consideration the provisions of Rules 54 and 73 of the Bihar Service Code, held that an employee stands superannuated only on attaining the age of superannuation and cannot be retired on the ground of completion of 40 years of service.

4. Same view has been taken by this Court in the case of Kalanand Jha v. State

of Jharkhand and Ors. reported in 2001 (2) BLJR 297 : 2001 (3) JCR 228 (Jhr).

5. In spite of time allowed to the respondents, no counter affidavit has been filed till date. In fact the case was argued on the basis of the provisions of law as referred above.

6. In view of the decisions as referred above, the impugned order contained in Memo No. 52 dated 11th February, 2002 being illegal, it is set aside. The petitioner will be deemed to be continuing in service upto the age of 58 years on the basis of date of birth as recorded in the service book and will be entitled for all Consequential benefits, including arrears of salary in respect to the period he was forced to remain out of service.

7. The writ petition stands disposed of, with the aforesaid observations/directions.