

(2010) 03 PAT CK 0172
In the Patna High Court
Case No : CWJC No. 1703 of 2010

Yugeshwar Roy

APPELLANT

Vs

Bihar School Examination Board (Higher Secondary) and
Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Bihar Intermediate Education Council (Repeal) Act, 2007 — Section 3(1), 3(2), 4
Bihar Intermediate Education Council Act, 1992 — Section 27
Bihar State Universities Act, 1976 — Section 67

Citation : (2011) 59 BLJR 2048 : (2011) 1 PLJR 990

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned Counsel for the Petitioner and the Bihar School Examination Board (Higher Secondary), Patna (hereinafter referred to as the Board).

2. Petitioner is aggrieved by the office order dated 29.5.2009, Annexure-1 issued under the signature of the Secretary of the Board whereunder the Petitioner who was serving the Board as Deputy Secretary has been directed to superannuate with effect from 1.6.2009 on attaining the age of 60 years on 31.5.2009. It is submitted on behalf of the Petitioner that aforesaid order is Violative of the service conditions applicable to the Petitioner and other officers and staff of the Bihar Intermediate Education Council (hereinafter referred to as the Council), which was dissolved in terms of the provisions of the Bihar Intermediate Education Council (Repeal) Act, 2007 (hereinafter referred to as the Repeal Act) as thereunder he and other officers and staff of the Council taken over by the Board are to serve the Board until they attain the age of 62 years or the lower age fixed by the State Government under the scheme of absorption, retirement and other service conditions formulated by committee of three Secretaries of the State Government in terms of the provisions contained in Sub-section (2) of

Section 3 of the Repeal Act. Reference in this connection is made to the office order issued by the Secretary of the Council dated 7.6.2005, Annexure-13. In paragraph-4 whereof it has been stated that the age of superannuation of the Petitioner shall be 62 years, which is the retirement age of the non-teaching officers of the University.

3. Petitioner was initially appointed as lower division assistant in the Lalit Narayan Mithila University, Darbhanga vide (sic) letter dated 22.12.1973 and continued to serve the University to the satisfaction of all concerned until he was deputed to serve the Council under Memo dated 14.5 1981 after its establishment in the year 1980. Later the services of the Petitioner was absorbed in the Council on the post of Section Officer vide order dated 16.3.1982, Annexure-5. While serving the Council Petitioner was promoted to the post of Assistant Secretary and thereafter on the post of Deputy Secretary and Joint Secretary. His promotion on the post of Joint Secretary was cancelled and he was reverted to the post of Deputy Secretary under order dated 6.11.2001, Annexure-12 against which he filed C.W.J.C. No. 15540 of 2001, which was dismissed as infructuous under orders dated 26.4.2007, Annexure-15 as the Council stood dissolved in terms of the provisions of the Repeal Act and in appreciation of the provisions of the Repeal Act this Court observed under orders dated 26.4.2007 that the status role and assignment of the Petitioner shall be decided by the new employer i.e. Board. In compliance of the observations of this Court made under orders dated 26.4.2007 Petitioner was assigned the post of Deputy Secretary in the Board under order dated 19.1.2008, Annexure-16.

4. Counsel for the Petitioner submitted that the impugned order is violative of the provisions contained in Sub-sections (1) and (2) of Section 3 and Section 4 of the Repeal Act as thereunder the Legislature mandates that the employees of the Council serving the Council on the date of enactment of the Repeal Act shall continue to serve the Board with the same service conditions as was applicable to them on the date of enactment of the Repeal Act until scheme of absorption, retirement, compulsory retirement and other service conditions is formulated by committee of the three Secretaries of the State Government for the employees of the Council is approved by the State Government. In this connection, with reference to the statement made in Paragraph-36 of the writ application learned Counsel for the Petitioner submitted that till date the committee of three Secretaries of the State Government have not made any scheme about the service conditions of the employees of the Council and by virtue of the provisions contained in Sub-sections (1) and (2) of Section 3 of the Repeal Act the employees of the Council including the Petitioner who served the Council on the date of enactment of the Repeal Act is entitled to the same service conditions which was applicable to them on the date of the Repeal Act.

5. In this connection it is further pointed out that on the date of enactment of the Repeal Act Petitioner and other employees of the Council were governed by Section 27 of the Bihar Intermediate Education Council Act, 1992 (hereinafter

referred to as the Council Act), which inter alia provides that the service conditions of the officers and staff of the Council shall be the same as that of the officers and staff of the University. The retirement age of teaching and non-teaching officers and staff of the University/College (other than inferior servants) is 62 years as per the provisions contained in Section 67 of the Bihar State Universities Act, 1976 (hereinafter referred to as the Universities Act) and with reference to the aforesaid two provisions it is submitted that the impugned order Annexure-1 is violative of Sub-Sections (1) and (2) of Section 3 of the Repeal Act and Section 27 of the Council Act and Section 67 of the Universities Act as thereunder Petitioner has been made to retire on attaining the age of 60 years and in appreciation of the aforesaid legal position the impugned order be set aside with direction to the Board to continue the Petitioner in service of the Board until he attains the age of 62 years or scheme to the contrary is made by the committee of three Secretaries, which is approved by the State Government. In this connection, reliance has been placed on the judgment of learned Single Judge of this Court in the case of Md. Musa Kazmi v. The State of Bihar and Ors.

6. Learned Counsel for the Board, Sri Lalit Kishore, AAG-3 has opposed the submission. He submits that after enactment of Sub-sections (1) and (2) of Section 3 and Section 4 of the Repeal Act Petitioner and other officers and staff of the Council are entitled to serve the Board and paid salary and allowances, which was payable to them on the date of enactment of the Repeal Act but their other service conditions, namely the date of retirement etc. shall be the same which is applicable to the employees of the Board. In this connection, he further submitted that the committee of three Secretaries as envisaged under Sub-sections (1) and (2) of Section 3 of the Repeal Act is to decide about the suitability of the employees of the Council for their absorption in the service of the Board as also about the post on which they have to be absorbed. According to the learned Counsel the committee of three Secretaries is not to decide about the age of superannuation of the employees of the Council who are to be absorbed in the service of the Board as the retirement age for the employees of the Board is already provided on attaining the age of 60 years. In the light of the aforesaid submission learned Counsel for the Board submitted that as the Petitioner has already attained the age of 60 years he has been rightly superannuated under the impugned order as was done in the case of Sri Pramod Kumar who was also deputed in the erstwhile Council from Patna University and superannuated on completion of 60 years under Memo dated 21.7.2008 and the writ application is fit to be dismissed.

7. Having heard counsel for the Petitioner and the Board as also having perused the contents of the writ application, Council Act, Universities Act and the Repeal Act, I am of the view that Petitioner was initially appointed in the service of the University on a non-teaching post whereafter he was absorbed in the Council. The Council was dissolved after enactment of the Repeal Act. In terms of the provisions contained in Sub-sections (1) and (2) of Section 3 and Section 4 of the Repeal Act, the services of the Petitioner has been taken over by the Board

and he is entitled to receive the same salary and allowances which was payable to him on the date of enactment of the Repeal Act until the State Government takes decision over the scheme of absorption, retirement and other service conditions formulated for the employees of the Council by the committee of three Secretaries constituted by the State Government in terms of the provisions contained in Sub-sections (2) of Section 3 of the Repeal Act. From paragraph-36 of the writ application it is evident that the committee of three Secretaries has not submitted any scheme of absorption retirement and other service conditions for the employees of the Council which has been considered and approved by the State Government, in the circumstances, the employees of the Council who have been taken over by the Board by virtue of the provisions of the Repeal Act are governed by the same service conditions which was applicable to them on the date of enactment of the Repeal Act and submission to the contrary made by Sri Lalit Kishore that they are subject to the retirement age applicable to the employees of the Board is contrary to the mandate of Sub-sections (2) of Section 3 of the Repeal Act. By virtue of the provisions contained in Section 27 of the Council Act and Section 67 of the Universities Act, the age of superannuation of non-teaching employees of the Council is 62 years. In the circumstances, the impugned order, Annexure-1 is violative of the service conditions applicable to the Petitioner and is accordingly, quashed with direction to the Board to reinstate the Petitioner and allow him to serve the Board until he attains the age of 62 years or a contrary scheme of absorption, retirement and other service conditions is formulated by the committee of three Secretaries for the taken over employees of the Council and is approved by the State Government. Failure of Sri Pramod Kumar to challenge the similar order of retirement bearing Memo dated 21.7.2008 referred to in the written submission filed on behalf of the Board as violative of the service conditions applicable to him and other similar employees of the erstwhile Council cannot be a ground to refuse the prayer made in the writ-application.

8. Petitioner filed this writ application vide token No. 11881 dated 19.8.2009, stamp reporter pointed out defects on 23.8.2009 which it appears was removed on 28.1.2010 and thereafter the filing of the petition was accepted on 29.1.2010. In the circumstances, Petitioner may not be entitled for any salary for the period between 1.6.2009 till the date of removal of the defects and acceptance of the filing of the writ application i.e. 29.1.2010.

9. The writ application is allowed to, the extent indicated above.