

Jharkhand High Court

Narayan Lal Mahata And Manorma ... vs State Of Jharkhand And Ors. on 26 September, 2006

Equivalent citations: 2007 (3) JCR 522 Jhr

Author: M Eqbal

Bench: M Eqbal, D Sinha

JUDGMENT M.Y. Eqbal, J.

1. This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 24.1.2006 passed in W.P. (S) No. 5239 of 2005, whereby the learned Single Judge dismissed the writ petition as against the present appellants on the ground that they are not entitled to be superannuated on attaining the age of 60 years as they have attained the age of 58 years prior to enhancement of age of superannuation.

2. The facts of the case lie in a narrow compass:

The present appellants are the employees of Central Cooperative Bank Limited, Dhanbad (in short 'Bank'). The Cooperative Bank is the wing of Department of Cooperative, Govt. of Jharkhand. The Jharkhand Government issued Government notification No. 5826 dated 26.10.2004 enhancing the age of superannuation of Government employees from 58 years to 60 years. The said notification was considered in the meeting of Board of Directors of the Cooperative bank and a decision was taken in the Board's meeting dated 22.12.2004 for adopting the notification dated 26.10.2004 issued by the Government. The said resolution was forwarded by the Managing Director of the Bank to the Registrar, Cooperative, Govt. of Jharkhand for necessary action. Accordingly, the resolution was issued on 28.12.2005 under the signature of the Secretary, Cooperative Department, Govt. of Jharkhand enhancing the age of superannuation of the employees of the Cooperative Bank from 58 years to 60 years but in the resolution it was mentioned that it would be effective from the date of resolution.

3. It was argued before the learned Single Judge that similar case was filed by the employees of the bank and Mineral Area Development Authority who superannuated prior to the date of superannuation and the Court issued direction to the Bank for taking a decision. Accordingly, a decision was taken and the writ petitioners were reinstated in service. The learned Single Judge, however, in the impugned judgment held that since these appellants superannuated prior to 28.12.2005, they cannot be given the benefit of enhancement of age of superannuation.

4. We have heard the learned Counsels appearing for the parties and perused the documents and the order annexed with the Memo of Appeal and the counter affidavit. From perusal of annexure-5 it appears that several writ petitions were filed by the employees of Dhanbad Central Cooperative Bank and Bihar State Mineral Development Corporation for a direction that they are entitled to be superannuated only after attaining the age of 60 years on the basis of Government circular dated 26.10.2004. This Court disposed of all those writ petitions (W.P.S. Nos. 257 of 2005) and other analogous cases) by passing a judgment and order dated 31.1.2005 directing the respondents to take a decision. It was further directed in the order that those employees who retired in between 31st January, 2005 and 15th February, 2005, shall be deemed to be continuing in service. The judgment

reads as under:

In these writ petitions, the petitioners, who are employees of Bihar State Mineral Development Corporation, the Mineral Area Development Authority and also the Co-operative Society, seek a direction that they are entitled to be superannuated only after attaining the age of 60 years on the basis of Government Circular dated 26.10.2004. The contention of the petitioners is that the Board of Directors of the respondents-Corporation have passed resolution and agreed in principle to enhance the age of retirement of its employees from 58 years to 60 years, but till date the decision has not been implemented. A copy of the resolution is annexed as Annexure-5 to the writ petition (no, 408/2005). The relevant portion of the minutes of the Board meeting dated 20th December, 2004 is reproduced herein below:

Item No. 11/9 to increase the superannuation age in regard to the employees of the corporation at par with State Govt. employees.

Board discussed the matter in view of State Govt. Notification No. 5826 dated 26.10.2004 and decisions taken in the same matter by other state Govt. undertaking and noted the legal opinion of learned Advocate Sri A.K. Mehta of Hon'ble Jharkhand High Court and agreed in Principle to increase the superannuation age in regard to the employees of the corporation at par with State Govt. Employees from 58 to 60 years and resolved as under:

Resolved that superannuation age in regard to the employees of the corporation be increased at par with State Govt. Employees however in view of the enforced Moral Code of Conduct permission of Election commission be sought through dept, of Mines and Geology, Govt. of Jharkhand before its implementation.

From bare perusal of the aforementioned resolution, it is manifest that the decision has not been implemented only because of the enforced Moral Code of Conduct.

The respondent, will, therefore, implement the decision already taken for enhancement of age of superannuation after the election is over.

In the facts and circumstances, this Court direct the respondents to implement the decision already taken as early as possible and not later than 15th February, 2005. In the meantime, those employees who retire in between 31st January, 2005 and 15th February, 2005, shall be deemed to be continuing in service.

5. The said judgment was challenged in L.P.A. No. 573 of 2005 and the Division bench of this Court dismissed the said appeal and affirmed the order passed by the learned Single Judge. Consequent thereupon, the writ petitioners of that case who were the employees of Dhanbad Central Cooperative Bank, namely Chandrika Prasad Yadav and others, were reinstated in service.

6. The only question that fall for consideration is whether denial of enhancement of age of superannuation to the appellants will amount to serious discrimination? As noticed above, some of

the employees including Chandrika Prasad Yadav of the respondent-Central Cooperative Bank, Dhanbad filed a writ petition being WPS No. 257 of 2005 before 28.12.005, the date when he resolution was issued by the bank. In that writ petition a direction was issued to the bank for taking a decision. The respondent-bank, after disposal of the writ petition and dismissal of letters patent appeal, passed order re-instating the said employee, namely, Chandrika Prasad Yadav and all wed him to continue in service upto the age of 60 years.

7. It is strange how an employee of the same bank whose case stands exactly on the similar footing, can be denied the benefits of age of superannuation i.e. 60 years. In other words, for some of the employees, because of the order of this Court, they shall be allowed to continue in service upto the age of 60 years and some of the employees similarly placed, because of the effective date fixed in the resolution, will be debarred from getting the benefit of the age of superannuation i.e. 60 years. We are, therefore, of the view that such treatment by the bank to their employees must be held to be discriminatory. The learned Single Judge has not taken into consideration this aspect of the matter.

8. For the aforesaid reasons, the instant appeal is allowed and the respondent-bank is directed to take a decision in the case of the appellants also and give relief to them in the same manner as has been given to the other employee, namely. Chandrika Prasad Yadav. Such decision must be taken within a period of four weeks from the date of receipt of a copy of this order.

D.K. Sinha, J.

9. I agree.