

(2006) 03 JH CK 0004

Jharkhand High Court

Case No: Writ Petition (S) No. 5443, 1918 and 6466 of 2005

Ashoke Kumar Banerjee and
Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: March 22, 2006

Acts Referred:

- Bihar and Orissa General Clauses Act, 1917 - Section 27
- Bihar Panchayat Raj (Amendment) Act, 1993 - Section 157
- Bihar Panchayat Samiti and Zila Parishad Act, 1961 - Section 75(1)
- Bihar Panchayat Samitis and Zila Parishads (Conditions of Service) Rules, 1964 - Rule 7, 7(3) , 7(4), 7(5), 7(6)
- Mines Act, 1952 - Section 57

Citation: (2006) 3 JCR 171

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Ajeet Kumar, J. Mazumdar, K. Sarkhel, M.K. Sinha, R. Roy and Rahul Kumar, for the Appellant; H.K. Singh, S.C.I., S. Prasad, G.P. IV and S. Akhtar, S.C. II, for the Respondent

Judgement

M.Y. Eqbal, J.

In these writ applications the petitioner have prayed for quashing the order as contained in memo No. 854 dated 3.9.2005

issued by the Deputy Development Commissioner-cum-Executive Engineer, Zila Parishad, Dhanbad whereby the petitioner has been

superannuated with effect from 30.9.05 on account of completion of 58 years of age and further for a direction upon the respondents-Zila Parishad

to implement the direction of State Government dated 26.10.2004 issued under the signature of the Secretary, Department of Personnel and

Administrative Reforms and Rajbhasha, Government of Jharkhand, Ranchi enhancing the age of superannuation from 58 years to 60 years.

2. It appears that by resolution as contained in memo No. 5826 dated 26.10.2004 issued by the Department of Personnel and Administrative

Reforms and Rajbhasha the age of superannuation of the employees have been increased from 58 years to 60 years. Petitioner's case is that the

employees of Zila Parishad have already been conferred a Government servant status at par with the employees of the State Government and

therefore, petitioner alongwith other employees of Zila Parishad are entitled to the same benefit and therefore their age of superannuation should

also be increased from 58 years to 60 years.

3. In the counter affidavit filed by respondent No. 1 it is stated that the notification dated 13.4.2005 has been issued by the Department of Urban

Development, Government of Jharkhand by which age of the employees of Municipal Corporation and Municipality Notified Area Committee has

been increased from 58 years to 60 years but no such decision has been taken in respect of the employees of Zila Parishad. It is further stated that

Zila Parishad is an independent body having definite structure and constitution, fund, Budget etc. of its own and the benefits extended to the Govt.

employees are not deemed to be applicable to the employees of Zila Parishad. It is further stated that Zila Parishad is an independent body having

definite structure and constitution, fund, Budget etc. of its own and the benefits extended to the govt. employees are not deemed to be applicable

to the employees of Zila Parishad.

4. Mr. R.S. Mazumdar, learned Counsel appearing for the petitioners, submitted that the petitioners are employees of Zila Parishad and as per the

notification dated 9.4.1977 issued by the Governor of Bihar, the employees of Zila Parishad had been conferred a Government servant status.

Learned Counsel referred the relevant provisions of the Bihar Panchayat Samitis and Zila Parishad (Condition of Service) Rules and submitted that

the employees of Zila Parishad are entitled to the same condition of service as applicable to the employees of State Government.

5. The respondents-Zila Parishad has been constituted under the Bihar Panchayat Raj Act, 1993. The employees of the Zila Parishad (Zila Board)

are governed by the rules called Bihar Panchayat Samitis and Zila Parishad (Condition of Service) Rules relating to their condition of service. The age of superannuation of the employees of Zila Parishad is 58 years as it was in respect of the employees of the State Government governed by the Bihar Service Code.

6. The short question that falls for consideration is whether by reason of notification issued by the Government of Jharkhand enhancing the age of superannuation of the Government employees from 58 years to 60 years the age of superannuation of the employees of Zila Parishad is also to be enhanced to 60 years.

7. By virtue of notification dated 9th April 1977 issued by the Governor of Bihar in exercise of power conferred by Sub-section (1) of Section 75 of the Bihar Panchayat Samitis and Zila Parishad Act, 1961, amendments have been made in the Bihar Panchayat Samitis and Zila Parishad (Condition of Service) Rules, 1964. Rule 7 of the said Rule has been amended. After Sub-rule (4), the newly substituted Sub-rule (5) has been substituted which reads as follows:

5. The conditions of service of the officers or employees of a District Board appointed to their respective posts under the Zila Parishad in accordance with the proviso to Sub-section 93) of Section 50, shall continue to be the same as before such appointments or, if they so opt within a period of four months from the said date, shall subject to the provisions of Rule 9, become the same as those of officers of similar category in the State Government.

8. The relevant provision of the amendment further reads as under:

For existing Rule 7, the following rule shall be substituted namely:

7. Ministerial Officers - (1) All Ministerial Officers of the Zila Parishad shall belong to a district cadre under the Zila Parishad and shall be appointed by the District Development Officer. They shall be posted under the Zila Parishad, or transferred from one place to another under the Zila Parishad, by the District Development officer with the approval of the Adhyaksha.

(2) The Ministerial officers of the Zila Parishad shall consist of following four categories, namely:

(a) Assistants;

(b) Stenographers,

(c) Typists, and

(d) Diarists-cum-Despatchers.

(3) Appointment to the lower post of each of the four categories mentioned in Sub-rule (2) shall be made by the District Development Officer from

amongst the candidates selected for the purpose by the Committee referred to in Sub-rule 94) and appointment to higher posts shall be made by

promotion as provided in Sub-rule (5):

Provided that all ministerial officers working under the District Board on the date of Zila Parishad takes charge of the office for the first time shall

be deemed to have been appointed to the district cadre and to the posts held by them under this sub-rule.

(4) The selection of candidates for appointment to the lowest post of each of the category mentioned in Sub-rule (2), shall be made by a

Committee consisting of the Adhvaksha, Upadhyaksha, a member of the Zila Parishad nominated by the Adhyaksha, the District Development

Officer and a District Level Officer nominated by the collector of the District.

(5) All appoints by promotion to the posts of ministerial officers shall be made on the recommendation of the Committee referred to in Sub-rule

(4):

Provided that the Primary considerations for selection for promotion shall be merit, technical qualification and knowledge and integrity; seniority

may be considered only thereafter;

Provided further that where a senior employee is proposed to be superseded, the Committee shall record full reasons for doing so.

(6) Casual leave to ministerial officers shall be given by the immediate superior gazetted officer and leave on average pay by the District

Development officer.

(7) subject to the provisions of Sub-rules (3) to (6) of Rule 7 and Rule 9, the service conditions of all ministerial officers shall be governed, mutates

mutandis, by the rules in force for the corresponding class of officers of the State Government.

For existing Rule 8, the following rule shall be substituted, namely:

8.(1) Other servants of a Zila Parishad will consist of all such employees of the Zila Parishad as are not included in categories (a) to (c) of Rule 3

and shall include peon, chairmen, daftaries, treadlemen, and similar other employees.

(2) Appointment of all servants of Zila Parishad under this rule shall be made by the District Development Officer from amongst the candidates

selected for the purpose by the Committee referred to in Sub-rule (4) of Rule 7. Their postings and transfers shall be made by the District

Development Officers.

(3) Subject to the provisions of Sub-rule (2) of Rule 8 and Rule 9, the service conditions of servants of the Zila Parishad appointed under this rule

shall be governed, mutates mutandis, by the rule in force for class IV officers of the State Government.

(Emphasis given)

For existing Rule 9, the following rule shall be substituted, namely:

9. Bar to pension to certain officers of the Zila Parishad - No officer or employee or servant, appointed by a Zila Parishad, who does not hold a

pensionable post on the date the Zila Parishad takes charge of office for the first time, shall be entitled to a pension:

Provided that such an officer, employee or servant shall be entitled to the benefits of contributory provident fund and gratuity according to rules for

the Government servants in force.

9. The Bihar Panchayat Raj Act 1947 (Bihar Act 7 of 1948) and Bihar Panchayat Samitee and Zila Parishad Act 1961 (Bihar Act 6 of 1962)

have been repealed by Bihar Panchayat Raj Act 1993 (Bihar Act 19 of 1993). This is to be noticed that consequent upon changes as incorporated

in 73rd Constitution (Amendment) Act 1992 to bring it in conformity with the purposes and substances of direction the new Act of 1993 was

enacted repealing 1947 Act and 1961 Act. Section 157 of 1993 Act reads as under:

Repeal and Savings :- The Bihar Panchayat Raj Act, 1947 (Bihar Act 7, 1948) and the Bihar Panchayat Samittee and Zila Parishad Act, 1961 (

Bihar Act 6, 1962) are hereby repealed;

Provided that such repeal shall not affected-

(a) the previous operations of the said enactments or anything duly done or suffered thereunder or

(b) Any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments or;

(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, forfeiture or punishment as aforesaid, and

any such investigation, legal proceeding or remedy that might have been instituted, continued or enforced, and any such penalty, forfeiture or

punishment that might have been imposed, as if this Act has not been passed,

(e) notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Act shall be deemed to

have been done or taken in exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing or

action was done or taken.

(f) notwithstanding such repeal the Gram Panchayats, Panchayat Samitis and Zila Parishads which were validly constituted under the repealed

Acts, shall continue to function till the constitution and the first meeting of the Gram Panchayat, Panchayat Samittee and Zila Parishad under this

Act.

10. As noticed above, in 1977 the Governor of Bihar in exercise of power conferred by Sub-section (1) of Section 75 of the Bihar Panchayat

Samitee and Zila Parishad Act 1961 made some amendments in Bihar Panchayat Samitee and Zila Parishad (Condition of Service Rules) 1964.

The said Rule has not been repealed expressly or by necessary implication in view of the Repeal and Saving as contained in Section 157 of 1993

Act. After creation of State of Jharkhand the Bihar Panchayat Raj Act 2001 has been enacted. Chapter XVII of 2001 Act speaks about repealing

and savings of the earlier 1961 Act and 1993 Act. The said Repeal and Savings clause is reproduced hereunder:

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11. Considering the entire Bihar Acts and the Rules made there under and also Jharkhand Act 2001, it is clear that the right conferred to the

employees of Zila Parishad to be treated as State Government employees has not been taken away by subsequent legislation or the Rules made

thereunder. It has been brought to the notice of this Court the Govt. resolution dated 26.10.2004 enhancing the age of superannuation of the

government employees from 58 years to 60 years has been made applicable to the employees of various other local Bodies of the Government.

Notwithstanding, the enactment of 1993 and 2001 Act by the Government of Bihar and the Government of Jharkhand respectively, the Rule

validly made under 1961 Act became a part of the parent Act and still survives as no other Rule inconsistent with the earlier rule has been framed

under the subsequent Act. In this connection reference may be made to a Division Bench Judgment of the Patna High Court in the case of Om

Prakash Choubey v. The Director, Secondary Education $\frac{1}{2}$ cum-Addl. Secretary, Govt. of Bihar and Anr. (1985) PLJR 1110. In paragraph 11

of the said decision, their Lordships observed:

It is well settled that a rule validly made, becomes a part of the parent Act, and survives the repeal of the Act under which it is framed, if it is not in

consistent with the provisions of the repealing Act and if such a rule can be framed under it. Section 27 of the Bihar and Orissa General Clauses

Act provides :- where any enactment is repealed and re-enacted by a Bihar Act with or without modification then, unless it is otherwise expressly

provided, by appointment notification, order, scheme, rule, by-law or form made or issued under the repealed enactment shall so far as it is not in

consistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted unless

and until it is suspended by any appointment, notification, order, scheme, rule, by-law or form made or issued under the provisions so re-enacted,

1972 rules which were framed u/s 8(1) of the 1960 Act to the extent they provided for the minimum qualification of the teachers, evidently

survived the repeal by the Ordinance in the year, 1974 and by the Act in the year, 1976, because no rules and/or statutory provisions otherwise

created, ever existed causing or creating repugnancy of any kind. Such statutory provision as to the minimum qualification of the teachers could not

be altered by the executive acts of the State. The respondents acted in gross violation of the statutory provisions as contained in the year, 1972

rules by issuing instructions to regularise recruitment of unqualified teachers. The manner in which the respondents have issued instructions, creates

an impression that for them there was no law, management of non-government High School functioned as Jagirdars and distributed appointments in

such school like alms.

12. In the case of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., , a similar question arose for consideration by

the Apex Court in the matter of validity of regulations made under Mines Act 1923 which was repealed by subsequent Act 1952. Their Lordships

observed:

The present is a case where the Mines Act, 1923 was repealed and was re-enacted with modifications as the Mines Act, 1952 : Section 29 of the

1923 Act empowering the Central Govt. to make regulations consistent with the Act for specified purposes was re-enacted in the 1952 Act as

Section 57 : regulations were made in 1926 u/s 29 of the 1923 Act, but at the relevant date, in 1955 no regulations had been made u/s 57 of the

1952 Act, so that in 1955 the Mines Regulations, 1926 had not been superseded by any regulations made under the re-enacted provisions of

Section 57 of the 1952 Act : Therefore, if Section 24 of the General Clauses Act is operative, the Mines Regulations, 1926, were in force at the

relevant date in 1955 and shall be deemed to have been made u/s 57 of the 1952 Act as there is no provision express or otherwise in the latter Act

to the contrary and the regulations are not in consistent with the re-enacted provisions.

13. Considering the facts and circumstances of the case and the law discussed herein above, I am of the opinion that the resolution taken by the

Government vide memo No. 5826 dated 26.10.2004 for enhancing the age of superannuation of the government employees from 58 years to 60

years shall also apply in case of the employees of the Zila Parishad. Hence, age of superannuation of the employees of Zila Parishad shall also be

60 years. However, this decision shall have prospective effect.

These writ applications are, accordingly, disposed of.