(2002) 12 PAT CK 0082

Patna High Court

Case No: L.P.A. No. 1264 of 2002

Baidya Nath Singh		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision: Dec. 10, 2002

Acts Referred:

- Bihar Service Code, 1952 - Rule 73
- Constitution of India, 1950 - Article 24

Citation: (2003) 1 PLJR 341

Hon'ble Judges: Ravi S. Dhavan, C.J; R.N. Prasad, J

Bench: Division Bench

Advocate: Purushottam Kr. Jha, for the Appellant; R. Prasad, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. This Letters Patent Appeal has been filed against the order of the learned Judge dated 22 November, 2002 in C.W.J.C. No. 4372 of 2002: Baidyanath Singh v. State of Bihar and Ors.

2. In so far as the facts are concerned, it is best that the facts as are given in the order which has been challenged are reproduced:

The dispute in this case relates to retirement of the Petitioner. It may be mentioned at the outset that there does not appear to be any dispute about date of birth of the Petitioner, at least no such dispute has been raised by the Respondents in the counter affidavit. The Petitioner has been retired on completion of 40 years of service. According to the Petitioner the age of superannuation having been fixed under Rule 73 of the Bihar Service Code as 58 years, and his date of birth being 2.4.46, he is entitled to remain in employment of the State up to April 2004 and he cannot be prematurely retired earlier.

It is relevant to mention here that the Petitioner was initially appointed on the post of Naka Guard in the Forest Department on 4.5.62. His date of birth being 2.4.46 he was thus 16 years 1 month and 2 days old on the date of appointment. When this was pointed out to the counsel for the Petitioner, and the Court observed that there cannot be appointment below the age of 18 years, counsel took plea that there is no bar to making appointment of a person below the age of 18 years. In response to the Court''s further observation that if a 16 years old boy can be appointed, why not a boy of lesser age, counsel submitted that appointment can be made up to the age of 14 years. Counsel, perhaps, had in his mind the provisions of Article 24 of the Constitution. Counsel submitted that no minimum age has been fixed for appointment in government service until 1975 when this was purportedly done by circular.

3. Learned Counsel submitted that one of the decisions of the Division Bench on C.W.J.C. No. 1728 of 1992 (Annexure 1) is, to the effect, that notwithstanding the fact that a person may have done work for 40 years and if he has completed 58 years of age, he will continue in service. Decisions noticed by the learned Judge were repeated before this Court. In this judgment the ratio_decidendi are not there.

4. The issue before the Court is not that the Petitioner Appellant had been appointed when he was not even 16 years of age as this Court is not going into any aspect so as to cast an eclipse on the appointment of the Petitioner Appellant. Be that as it may, he received an appointment and he served the government until he was made to retire. The aspect that he was made to retire has become an issue.

5. The Petitioner ought to have retired at 58 years of age. The contention of the Petitioner is that he is not 58 years old at present and has still some time to go in service. On the other hand the stand of the government is that other persons like the Petitioner retired at the age of 58 years or upon rendering 40 years of service were not retained in service.

6. There is an order of the government dated 13 January, 2002 which has been appended as Annexure 6 to the rejoinder affidavit. The contention on behalf of the Petitioner Appellant is that this may be treated as a query by the government within itself. A reading of the order itself shows that certain questions arose upon different decisions of the High Court on what exactly should be the policy of the government. If a person may have rendered more than 40 years of service and may not be of 58 years can he go on further?

7. In this government order (Annexure 6) the issue apparently is clear that by a prior government order of 17 August, 1995 a stand had been taken, to the effect, that notwithstanding the age of retirement if a person has rendered 40 years of service then he may not be continued in service.

8. The reason behind this policy is that if a person is to retire at 58 years of age then it is presumed that he had been employed regularly at 18 years of age and not

irregularly below this age. The issue of the past whether this particular Petitioner Appellant may have been recruited at a a time when he may not have been 18 years is an aspect which this Court is not going into. To retire at 58 years or 40 years of service is a prudent policy and rule of common sense. All things considered if a person (like the Petitioner) is recruited at 18 years he will retire at 58 years and years of service will not be more than 40 years. Otherwise, it will lead to illogical results.

9. These are matters of policy and the Court is not inclined to interfere with the order of the learned Judge. Suffice it to say that the Petitioner Appellant himself has recorded that he has already done 40 years of service and with a little more under the interim order of the Court granted when the writ petition was pending he would be entitled to salary for the period when he worked.

Dismissed.