

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1074 of 2014

IN

Civil Writ Jurisdiction Case No.7888 of 2012

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1. The State of Bihar, through the Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
2. The Under Secretary, Department of Industries, Govt. of Bihar, Patna.
3. The Director Technical Development Department of Industries (Technical).
4. The Secretary, Finance Department, Govt. of Bihar, Patna.
5. The Joint Secretary, Finance Department, Govt. of Bihar, Patna.

.... Appellants

Versus

1. Chandra Bhushan Choudhary, S/o Late Munindra Chaudhary, Resident of Village - Khangura, P.S. - Katra, District - Muzaffarpur, presently 13, M.I.G. Kankarbagh, Patna - 20.
2. The Bihar State Khadi and Village Industries Board, through its Chairman, Mahesh Bhawan, Gandhi Maidan, East, Patna - 4.
3. The Chief Executive Officer, Bihar State Khadi and Village Industries Board, Mahesh Bhawan, Gandhi Maidan, East, Patna - 4.

.... Respondents

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Appearance:

For the Appellants	: Mr. Lalit Kishore, Principal AAG Mr. Abbas Haider, SC-16 Mr. Ravish Chandra, AC to SC-16
For the Respondent No.1	: Mr. Gajendra Kumar Jha, Advocate
For the Respondent Nos.2 & 3:	Dr. Amitesh Kumar, Advocate

(Khadi Board)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 03/11/2015

The State of Bihar and its officials, being aggrieved by the order, dated 24.02.2014, passed in CWJC No.7888 of 2012, by a learned single Judge of this Court, have preferred the present appeal under Clause 10 of the Letters Patent of this High Court.

2. By the order, under appeal, the learned single Judge has allowed the writ application, made by respondent No.1, under Article 226 of the Constitution of India, and has held that the age of superannuation of the employees of "Bihar State Khadi and Village Industries Board" (***hereinafter referred to as "the Board"***), would be the same, as of the employees of the State Government of Bihar, i.e., 60 years, with effect from the date Rule 73 of the Bihar Service Code (***hereinafter referred to as "the Code"***) came to be amended, i.e., 29.03.2006.

3. For arriving at the conclusion, the learned



single Judge has held that the service conditions of the employees of the Board being at par with the employees of the State Government, except in respect of pension, Rule 73 of the Code was applicable to the employees of the Board and no sooner Rule 73 of the Code came to be *amended*, with effect from 29.03.2006, enhancing the age of superannuation of the employees of the State Government to 60 years, the said amended provision automatically became applicable to the employees of the Board too.

4. Before we deal with the core issue, with reference to the relevant statutory provisions, we consider it apt to outline uncontroverted facts, which are essential in order to correctly deal with the present issue.

5. Respondent No.1 was an employee of the Board working as Ledger Keeper. The Board is a body corporate, established by Bihar Khadi Village Industries Act, 1957 (*hereinafter referred to as "the Act"*). Section 10 of the Act authorizes the Board to appoint such number of officers and servants, as it may consider necessary, but subject to approval of the State Government. The Board is authorized to determine, by Regulations, made by the State Government, such as, remuneration, allowances and other conditions of service, of the officers and servants of the Board. The power of making Regulations, for the purpose of

determination of remuneration, allowances and other conditions of service, is, however, controlled by Section 34 of the Act inasmuch as Section 34 of the Act makes it indisputably clear that such Regulations can be made only with the previous sanction of the State Government. To be little more explicit, Section 34 of the Bihar Khadi Village Industries Act, 1957, is reproduced hereinbelow:-

"34. Regulations.-(1) *The Board may, with the previous sanction of the State Government, make Regulations not inconsistent with this Act and the Rules made thereunder and publish them in the Official Gazette.*

(2) In Particular and without prejudice to the generality of the foregoing power, the Board may make Regulations providing for-

(a) the procedure and disposal of its business;

(b) remuneration, allowances and other condition of service of members of the staff of the Board, [other than Financial Advisor and Chief Accounts Officer to the Board;] and

(c) functions and duties of the members of the staff of the Board, [other than Financial Advisor and Chief Accounts Officer to the Board.]

6. Section 30 of the Act provides that the Board, in discharge of its functions, shall be guided by such instructions, as may be given to it, from time to time by the State Government.

7. The dispute, giving rise to institution of CWJC No.7888 of 2012, arose as the State Government decided to enhance the age of superannuation of its employees to 60 years by issuing a *Circular*, dated 24.03.2005, and, then, carried out necessary amendment, in this regard, vide Notification, dated 29.03.2006, in Rule 73 of the Code, but refused to accede to the request made by the Board to enhance the age of superannuation of employees of the Board as contained in the State Government's communication, dated 15.05.2009.

8. The State Government, later on, by a *Memorandum*, dated 24.01.2012, decided to enhance the age of superannuation of the employees of the Board from 58 years to 60 years, but it was decided to be implemented with effect from the date of issuance of the said letter. Prior to issuance of the said letter, dated 24.01.2012, respondent No.1, who was petitioner before writ Court, had already retired, on 31.12.2010.

9. Aggrieved by the said communication, as contained in letter No.1648, dated 15.05.2009, whereby the



State Government had expressed disagreement with the proposal of the Board to enhance the age of superannuation of its employees from 58 years to 60 years and subsequent decision of the State Government, communicated through Memorandum No.427, dated 24.01.2012, allowing enhancement of age of superannuation of the employees of the Board, but with prospective effect, respondent No.1 approached this Court by filing an application, under Article 226 of the Constitution of India, giving rise to CWJC No.7888 of 2012, with a plea that service conditions (except pension), governing the employees of the State Government of Bihar, were applicable in *toto* to the employees of the Board. In support of his contention, the writ petitioner had relied upon an extract from the proceedings of 21st Ordinary Meeting of the Board held on 18.06.1958, which read thus:-

14. "To approve of the proposal to follow the relevant rules of the State Government in respect of Matters relating to disciplinary control over subordinate Staff and those regarding fixation and payment of salary T.A., C.L.A and other allowances to them from the date the State Board came into existence pending the finalization of the Rules and Regulations of the Board."



10. The writ petitioner also placed reliance upon a communication, dated 06.09.1988, issued under the signature of Industrial Development Commissioner, Government of Bihar, addressed to the Advisor-Cum-Secretary, Labour Employment & Training Department, Government of Bihar, wherein it was mentioned by the Industrial Development Commissioner that all the Rules of the State Government (except pension) were applicable to the Board inasmuch as the Board was not a commercial establishment. Additionally, the writ petitioner relied upon proceedings of 374th Meeting of the Board held on 18.02.2006, whereby the Board is said to have given approval to the proposal for enhancing the age of superannuation of the employees of the Board from 58 years to 60 years. It transpires from the records that the said proceeding of 374th Meeting of the Board were sent to the Industries Department, Government of Bihar, on 31.10.2006.

11. An employee of the Board appears to have approached this Court by filing a writ petition, bearing CWJC No.3156 of 2009 (Devanand Sinha @ Devanand Singh Vs. The State of Bihar & Ors.), seeking a direction to enhance the age of superannuation of the employees of the Board from 58 years to 60 Years. This Court, vide order,

dated 16.04.2009, disposed of the said writ petition with the following observations:-

".....It is disposed off with the observation that the Board/concerned authority shall take a final decision on the issue of enhancement of age of superannuation of its employees in view of its own resolution adopting the Bihar Service Code and amendments made therein by the State Government....."

12. The Industries Department, through letter, dated 15.05.2009, addressed to the Chief Executive Officer of the Board, communicated, on the basis of opinion, obtained from the Finance Department, Government of Bihar, its disapproval of the proposal for enhancement of age of superannuation of the employees of the Board. For the purpose of the present case, we must pause here to mention that respondent No.1 has been made to retire, with effect from 31.12.2010, on attaining the age of superannuation, which fact is not in dispute.

13. It appears that the Board, again, considered the issue of enhancement of age of superannuation of its employees and made yet another request to the Industries Department of the State Government to reconsider the question regarding

enhancement of retirement age of its employees.

14. So far as respondent No.1 is concerned, it is evident from Annexure-9, to the writ application, that he was given notice that he would be retiring, with effect from 31.12.2010, upon attaining 58 years of age, his date of birth being 01.01.1953. The respondent No.1 filed a writ petition in this Court, bearing CWJC No.20796 of 2010, which came to be disposed of by an order, dated 30.09.2011, with a direction to the State Government to take a final decision on the proposal of enhancement of age of superannuation of the employees of the Board. The State Government, through its Resolution, communicated vide *Memo* No.427, dated 24.01.2012, though decided to allow enhancement of age of superannuation of the employees of the Board, but made it clear that the order would be effective from the date of its issuance, i.e., 24.01.2012.

15. As has been noted above, respondent No.1 challenged the order, dated 15.05.2009, whereby the State Government had earlier refused the proposal to enhance the superannuation age of the employees of the Board and subsequent order, dated 24.01.2012, whereby it was decided to enhance the superannuation age, but with prospective effect, i.e., 24.01.2012.

16. By the order, under appeal, the learned



single Judge sustained the challenge to the said decisions of the State Government, holding that the Board had approved the proposal to follow the relevant Rules and Regulations of the State Government regarding disciplinary control over the subordinate staff and the State Government also "*appears to have accepted that vide Annexure-2*". Annexure-2, as has already been pointed out, is a communication by the Industries Department, Bihar, Patna, to the Advisor-Cum-Secretary, Labour Employment & Training Department, Government of Bihar. Aggrieved by the decision so rendered, the State Government and its officials are in appeal before this Court.

17. Heard Mr. Lalit Kishore, learned Principal Additional Advocate General, and Mr. Abbas Haider, learned Standing Counsel-17, appearing on behalf of the appellants. We have also heard Mr. Gajendra Kumar Jha, learned counsel, appearing on behalf of the respondent No.1 and Dr. Amitesh Kumar, learned counsel, appearing on behalf of the respondents-Khadi Board.

18. Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the appellants, has submitted that learned single Judge fell in error, while holding that there was a decision of the Board, duly approved by the State Government, to the effect that



service conditions of the employees of the State Government shall apply *mutatis mutandis* to the employees of the Board. He contends that under the provisions of the Act, the Board could frame Regulations, laying down service conditions of the employees of the Board; but only with the prior sanction of the State Government. He, in support of his submission, has given emphasis on the provisions, contained in Sections 10, 30 and 34 of the Act.

19. Mr. Gajendra Kumar Jha, learned counsel, appearing on behalf of the respondent No.1, on the other hand, has placed reliance upon a decision of this Court, in case of ***Nand Kishore Thakur Vs. The State of Bihar & Ors.***, reported in ***1999 (2) PLJR 380***, to contend that under Sections 10 and 30 of the Act, the State Government's power of approval is limited and the provisions cannot be stretched to mean that the Board is incompetent to lay down and take decisions as regards service conditions of its employees. He has also placed reliance upon another Division Bench decision of this Court, in case of ***Bihar Rajya Khadi Gram Udyog Board Karyakarta Sangh & Ors. Vs. The State of Bihar & Ors.***, reported in ***1996 (1) AllPLR 250***. Mr. Jha, learned counsel, has further relied on the decision of the Supreme Court, in ***Harwindra Kumar Vs. Chief Engineer Karmik & Ors.***, reported in ***AIR 2006 SC***

365, in support of his contention that if the Board had taken a decision to make available to its employees the service conditions, as applicable to the employees of the State Government, the decision of the State Government, enhancing the age of superannuation of the employees of the Government, should automatically apply to the employees of the Board.

20. We have perused the pleadings on record and have given our anxious consideration to the rival submissions made on behalf of the parties.

21. From the pleadings and material on record, we do not find any decision of the Board, taken at any stage, to the effect that service conditions, as applicable to the government servants of Bihar, shall apply to the employees of the Board. The only decision, which has been brought to our notice, in this regard, is an extract from proceedings of 21st Ordinary Meeting of the Board, held on 18.06.1958, which has been quoted hereinabove.

22. From the proceedings of 21st Ordinary Meeting of the Board, held on 18.06.1958, extracted above, what clearly surfaces is that the Board had approved the proposal to follow relevant Rules and Regulations of the State Government *in respect of the matters, "relating to disciplinary control over subordinate staff and those*

regarding fixation and payment of salary, T.A., C.L.A. and other allowances”, pending finalization of the Rules and Regulations of the Board.

23. There is absolutely no material on record to show that any other decision was taken by the Board to apply the service conditions, as applicable to the employees of the State Government, to the employees of the Board.

24. We are, therefore, unable to accept the plea taken on behalf of the respondent No.1, based on the communication, dated 06.09.1988, of the Industrial Development Commissioner, Government of Bihar, which contains that service conditions of the officers and employees of the Board were same as of the State Government servants. Such a decision could have been taken by the Board in terms of the statutory provisions embodied under Section 10 read with Sections 30 and 34 of the Act with the prior sanction of the State Government. Consequently, respondent No.1 could not have, in our considered view, derived any right to be treated at par with the employees of the State Government, for the purpose of determination of his service conditions, merely on the basis of the said communication, dated 06.09.1988.

25. The decisions of this Court, in case of **Nand Kishore Thakur** (*supra*) and **Bihar Rajya Khadi**

Gram Udyog Board Karyakarta Sangh (*supra*), have no application to the facts and circumstances of the present case and these decision, in no way, come in aid of the case of respondent No.1.

26. In the case of ***Nand Kishore Thakur*** (*supra*), a learned single Judge of this Court had occasion to deal with a situation, where the employees of the Board were seeking direction for payment and admissibility of salary for the post of Typist and making appointment against various posts. Dealing with Section 10 of the Act, the Court held that the State Government's power was limited to determine the number of posts against which the Board could make appointment and the jurisdiction of appointment, thereafter, vests in the Board. Similarly, in the case of ***Bihar Rajya Khadi Gram Udyog Board Karyakarta Sangh*** (*supra*), a Division Bench of this Court, while dealing with the role of the State Government in making available to the Board necessary fund/grant for the purpose of achieving the declared objectives under the Act. The Division Bench of this Court had, therefore, no occasion or opportunity to deal with, in ***Bihar Rajya Khadi Gram Udyog Board Karyakarta Sangh*** (*supra*), the dispute as to whether the service conditions, as applicable to the employees of the State Government, were also applicable to the employees of

the Board *mutatis mutandis*.

27. Further, the Supreme Court's decision, in case of **Harwindra Kumar** (*supra*), cannot be pressed into service in the present facts and circumstances of the case. In the case of **Harwindra Kumar** (*supra*), the Supreme Court had the occasion to consider the question of enhancement of age of superannuation of the employees of Uttar Pradesh Jal Nigam consequent upon *amendment* in Rule 56 (a) of Uttar Pradesh Fundamental Rules. The employees of Jal Nigam were covered by Uttar Pradesh Water Supply and Sewerage Act. Section 97 (2) (c) of the Act conferred power on Jal Nigam to make Regulations with the previous approval of the State Government on matters, *inter alia*, salaries, allowances and other conditions of service of employees of the Jal Nigam. In exercise of the aforesaid power, Regulations were framed by the Jal Nigam and Regulation 31 thereof read as follows:-

"Regulation 31- Besides the provision made under these regulations, the pay and allowances, pension, leave, imposition of penalty and other terms and conditions of service shall be governed by such rules, regulations and orders which are equally applicable to other serving government servants concerned

functioning in the State.”

28. In case of the employees of the Jal Nigam, as in the case of *Harwindra Kumar (supra)*, there was specific provision, under the duly framed Regulations, that conditions of service shall be governed by such Rules, Regulations and Orders, which are equally applicable to other serving government servants functioning in the State. It was in this background that the Supreme Court held, in ***Harwindra Kumar’s case (supra)***, that as long as Regulation 31 of the Regulations was not *amended*, the age of superannuation of the government servants, employed under State of Uttar Pradesh, shall be applicable to the employees of the Jal Nigam.

29. Facts of the present case, as has been noted above, are entirely different. Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the appellants, is correct in his submission that in the absence of any Regulation, framed in accordance with the Act or any decision taken by the competent authority, service conditions, as applicable to the State Government servants, could not have been made applicable to the employees of the Board.

30. We are constrained to interfere with the order, under appeal, passed by the learned single Judge,

which we, accordingly, do. The order, under appeal, dated 24.02.2014, passed in CWJC No.7888 of 2012, is hereby set aside. The present appeal is, accordingly, allowed.

31. CWJC No.7888 of 2012 (Chandra Bhushan Choudhary Vs. The State of Bihar & Ors.) stands dismissed.

32. Interlocutory applications, if any, stand disposed of accordingly.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ. : I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

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