

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.244 of 2010
IN
Civil Writ Jurisdiction Case No. 10355 of 2009

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1. The Managing Director Bihar State Small Industries Corporation, Indira Bhawan, Patna

.... Appellant/s

Versus

1. Krishna Kant Lal S/O Late Sridhar Lal Das R/O Vill.- Bajitpur, P.O.- Bajitpur, P.S.- Manigachi, Distt.- Darbhanga, Bihar, At Present, Retired Accountant, Head Office, Bihar State Small Industries Corporation, Indira Bhawan
2. The State Of Bihar
3. The Industrial Development Commissioner-Cum-Secretary Department Of Industries, Bihar, Patna
4. Director Of Industries Bihar, Patna
5. The Secretary Finance (Bureau Of Public Enterprises) Finance Department, Bihar, Patna
6. The Secretary Personal And Administrative Reforms Department, Bihar, Patna
7. The Deputy Secretary Industries Department, Bihar, Patna

.... Respondent/s

with

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Letters Patent Appeal No. 370 of 2010
IN
Civil Writ Jurisdiction Case No. 16114 of 2009

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1. Bihar State Small Industries Corporation Through Its Managing Director Indira Bhawan, Patna-Bihar

.... Appellant/s

Versus

1. The State Of Bihar
2. The Industrial Development Commissioner Department Of Industries, Bihar, Patna
3. The Director Of Industries Bihar, Patna
4. Arun Kumar Jha S/O Late Jata Shankar Jha R/O Vill.- Sarabad, P.S.- Pandaul, Distt.- Madhubani

.... Respondent/s

with

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Letters Patent Appeal No. 2038 of 2010
IN
Civil Writ Jurisdiction Case No. 17225 of 2010

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Bihar State Small Industries Corporation

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :
(In LPA No.244 of 2010)



For the Appellant : Mr. Uma Kant Singh, Advocate.
 For the Respondent/State : Mr. Madan Monhan, AC to SC 5
 For the Respondent No. 1 : Mr. Rajendra Kumar Jain

(In LPA No.370 of 2010)
 For the Appellant : Mr. Uma Kant Singh, Advocate.
 For the Respondent/State : Mr. Vishambhar Prasad AC to AAG 5

(In LPA No.2038 of 2010)
 For the Appellant : Mr. Uma Kant Singh, Advocate.
 For the Respondent : Mr. S.K. Ghosh AAG2

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
 ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 12-09-2017

These three appeals are filed by the Bihar State Small Industries Corporation challenging the orders passed by the writ court on 16.10.2009 in C.W.J.C. No. 10355 of 2009, the order dated 11.10.2010 passed in C.W.J.C. No. 17225 of 2010 and the order dated 26.11.2009 passed in C.W.J.C. No. 16114 of 2009.

The only short question involved in the matter is as to whether the employees working in the corporation are entitled for enhancement of age of superannuation i.e. 60 years. Once the Bihar Service Code and Rule 73 thereof has been amended by the State Government and, the age in the said rule has been enhanced from 58 to 60 learned writ court having held that the provisions of Rule 73 of the Bihar Service Code would apply to the corporation in view of the resolution passed by the Board of Directors these appeals have been filed by the corporation. The respondent employees were working in



the corporation and it is seen that the Board of Directors took a decision as far back as on 22.12.2001, whereby it was resolved by the Board that the provisions of Rule 73 of the Bihar Service Code shall be made applicable to the employees of the corporation. Initially the age of retirement prescribed under Rule 73 of the Bihar Service Code was 58 years and when the said Rule was amended the age was enhanced to 60 years. The employees sought benefit of the amended Rules which was brought into force with effect from 24.03.2005 and claimed that they are also entitled to work up to the age of 60 years. The issue has been considered by learned writ court and after taking note of certain judgments of the Supreme Court and this Court in the case of ***Lala Nand Kumar vs. Bihar State Food & Civil Supplies Corporation Ltd.*** reported in 2008(1) PLJR 579 the issue in question has been decided. It was the case of the corporation before the writ court that the corporation having not accepted the enhanced age of superannuation and there being no resolution for accepting the amendment made in Rule 73 of the Bihar service Code the same cannot be made applicable to the employees of the corporation.

However, it is found that similar submissions and objections were also raised in the case of Lala Nand Kumar (supra) and it has been held that once the resolution is to adopt Rule 73 of the Bihar Service Code to employees of the corporation, automatically as and when the provisions of Rule 73 is amended will applies to the



employees of the corporation and there is no need to any further resolution to adopt until and unless there is contrary resolution whether i.e. applicable and provisions of Rule 73 of the Bihar Service Code or even a resolution specifically providing that the amendment made in the year 2005 will not apply. The learned writ court after examining all the facts came to the conclusion that there being no resolution to the contrary no sooner decision was taken to amend Rule 73 and effect of the decision of the State Government which automatically becomes applicable to the employees of the corporation.

Now, we are of the considered view that this principle adopted by learned writ court, as a principle which has been laid down in the case of Lala Nand Kumar (supra), we see no error committed by the learned Writ Court warranting re-consideration. These appeals are, therefore, dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
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