

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4650 of 2012

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Tulsi Das Goswami S/O Late Dubri Goswami, R/O Mohallah- Bahadurpur
Housing Colony, Flat No. 171, Sector-6, P.O.- B.H. Colony, P.S.- Agamkuan,
District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Law, Old Secretariat, Government of Bihar, Patna.
2. The Secretary Department of Law, Old Secretariat, Government of Bihar, Patna.
3. The Bihar State Board of Religious Trust, Vidyapati Marg, P.O.- G.P.O., P.S.- Budha Colony, Patna, through its President.
4. The President, The Bihar State Board of Religious Trust, Vidyapati Marg, P.O.- G.P.O., P.S.- Budha Colony, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Mahesh Narayan Parbat, Senior Advocate
For BSBRT (R. No. 4)	:	Mr. Shekhar Singh, Advocate
		Mr. Avinash Kumar Singh, Advocate
For the State	:	Mr. Sarvesh Kumar, GP-24

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

7 23-02-2024 Heard Mr. Mahesh Narayan Parbat, the learned senior counsel appearing on behalf of the petitioner, Mr. Sarvesh Kumar, the learned GP-24 for the State and Mr. Shekhar Singh, the learned counsel appearing on behalf of the Bihar State Board of Religious Trust.

2. The present writ petition has been filed for the following reliefs:-

(i) To issue a writ of certiorari for quashing the office order as contained in memo no. 937 dated 30.08.2011 (Annexure- 11), issued by the President



of the Bihar State Board of Religious Trust, through which petitioner was being intimated that he would retire from the service of the Bihar State Board of Religious Trust, w.e.f. 31.08.2011, after attaining age of 58 years.

(ii) To issue a further writ of certiorari for quashing the letter no. 3407 dated 20.09.2006 (Annexure- 8), issued by the State Government, through which it has been communicated to the Board that the notification published on 10.05.2005 for adoption of provisions of Bihar Service Code and for enhancement of age of superannuation of employees of Board also from 58 years to 60 years like the employees of the State Government has not been considered due to so called defective publication.

(iii) To issue a writ of mandamus, commanding the respondents to give effect to memo no. 1500 dated 24.03.2005, issued by Finance Department of the State Government through which amendment has been done in Rule 73 of Bihar Service Code and age of superannuation of employees of State Government has been enhanced from 58 years to 60 years.

(iv) To issue a further writ of mandamus, commanding the respondents to discharge their legal obligation to follow the decision of the State Government regarding enhancement of the age of employees, which is applicable in the case of petitioner also due to adoption of Bihar Service



Code for the service condition of employees of the Bihar State Board of Religious Trust and to enhance the age of retirement of petitioner from 58 years to 60 years.

(v) To issue a further writ of mandamus commanding the respondents to allow the petitioner to work on his post of Assistant Superintendent till attaining his age of 60 years.

(vi) To any other relief or relief's for which the petitioner may be found entitled to.

3. The petitioner was initially appointed on the post of law assistant/law agent on 20.10.1973 by the Bihar State Board of Religious Trust (hereinafter referred to as "Board/BSBRT") and the service of the petitioner was confirmed w.e.f., 01.03.1975 by the respondent Board. Learned counsel for the petitioner submits that at the time of appointment, the age of superannuation of the employees of the Board was 58 years, likewise the employees of the State Government and after coming into existence the report of the 5th Pay Revision Committee, the age of superannuation of employees of the State Government was enhanced from 58 years to 60 years and accordingly, a notification contained in Memo No. 1500 dated 24.03.2005 was issued by the Finance Department of the State Government. Later on, in terms of the said circular, an



amendment was also held in the Rule 73 of the Bihar Service Code.

4. Learned counsel for the petitioner submits that Section 83 of the Bihar Hindu Religious Trusts Act, 1950 empowers the respondent Board to make by-laws for any matter necessary for carrying into effect the object of the Act and its sub section clause 2 (j) empowers the Board to make by-laws in respect to the number, designation, grades, salary, allowance and other conditions of the services including the powers and duties of the officers and servants of the Board and as per sub clause 3 of Section 83, the by-laws framed under Section 83 suggests that if the State Government do not approve and confirm such by-laws within four months of the date of receipt thereof by the State Government, the said by-laws shall be deemed to have been approved and confirmed on the expiry of said four months.

5. The Board in its notification dated 02.04.2005, vide resolution no. 5, mentioning therein in the recommendation of the Finance Committee constituted by the Board for adoption of the Bihar Service Code (except pensioning matters) for regulating service condition of the employees of the Board. He further submits that after the decision of the Board, dated



02.04.2005, the then President of the Board firstly, to get the said decision notified in District Gazette dated 10.05.2005 and to send the copy of the said Gazette to the State Government, vide its letter no. 246 dated 10.05.2005 for its approval. But, no action was taken by the authority of the State Government regarding approval of the said decision of the Board and the said became approved in terms of Section 83(3) proviso of Bihar Hindu Religious Trusts Act, 1950. He further submits that after approval of the said notification in terms of Section 83(3), authorities of the Bihar State Board of Religious Trust were not implementing the said decision of the Board to the employees of the Board and they were retiring the employees of the Board treating the age of their superannuation as 58 years. He further submits that it appears that prior to the approval of the said decision, as amendment in Rule 73 of Bihar Service Code was already done by the State Government and the age of retirement of the employees of the State Government was already enhanced from 58 years to 60 years and after approval of the decision of the Board to adopt the provisions of Bihar Service Code for the employees of the Board, the aforesaid Rule 73 of the Bihar Service Code was also applicable to the employees of the Board.



6. Learned counsel for the petitioner further submits that despite all the aforesaid facts, the Board has intimated to the petitioner that he would retire from the service of Board w.e.f., 31.08.2011, after attaining the age of 58 years.

7. Learned counsel for the BSBRT has filed a detailed counter-affidavit stating therein that the main issue in the present writ petition is that, whether the petitioner is entitled to the benefits of the Government notification dated 24.03.2005, by which the State Government amended the Rule 73 of the Bihar Service Code, enhancing the age of superannuation of its officers and employees from 58 years to 60 years. He further submits that the Board has not adopted the entire provisions of the Bihar Service Code till date, and under Section 26 of the Act, Board has been authorized to determine the number, designation, grades and scales of salary and other conditions of its officers and servants. It has further been empowered to appoint, promote, grant leave to such officers and servants and impart punishment by reducing them in rank or dismissing them or dispensing with their service or suspending them, when required. He further submits that bare perusal of the order dated 09.07.2008, passed in MJC No. 2300 of 2006, it appears that:-

(iii) that the notification of Board bearing letter no. 248 dated 10.05.2005, has been published in



Gazette is not in dispute with regard to consideration of the notification by the State Government in terms of Sub Section (3) of Section 83 of the Bihar Religious Trust Board, 1950, written response has been filed by opposite party no. 5, paragraph no. 4 thereof reads thus:-

“4. That this opposite party has not intentionally or willfully disobeyed and violated the order of the Hon’ble High Court dated 07.03.2006 passed in CWJC No. 864 of 2006 along with CWJC No. 6069 of 2005. This opposite party has taken over charge of Administrator cum OSD, Bihar State Board of Religious Trusts on 23.05.2006 and on 03.06.2006 sent a request vide letter no. 1064 to the Secretary, Law Department, Government of Bihar for taking an early decision in the matter. Thereafter the Law Department asked this opposite party to take a decision in the matter by letter no. 2106 dated 21.06.2006. In fact, under Section 83(3), the decision was to be taken by the Government. However, since the new Law Secretary has joined recently, this opposite party examined the matter and placed his views on the matter of extending the age of superannuation from 58 years to 60 years vide letter no. 1697 dated 29.06.2006. After doing so, the opposite party submitted that whatever decisions the Government or the



Hon'ble High Court would take, shall be accepted and implemented by the opposite party. Thus, the present opposite party has promptly acted in this matter and has not intentionally or willfully or deliberately violated the order of the Hon'ble Court''.

(iv) The communication sent by Secretary-cum-Legal Remembrance to the Board on 20th September, 2006 is also available on record. It has been placed along with the show cause filed by opposite party no. 2.

(v) It transpires therefrom that the notification published at the behest of the Board was defective. The Government, thus, decided not to approve the notification dated 10th May, 2005.

(vi) On the face of the aforesaid facts, we are satisfied that the respondents cannot be held to be guilty of any deliberate disobedience of the order of this Court passed on 07.03.2005.

(vii) MJC has no merit. It is disposed of accordingly.

(viii) Needless to say that, if aggrieved, the petitioner may put in issue the legality and correctness of the communication dated 10.05.2005 in appropriate proceeding in accordance with law.

8. Learned counsel for the BSBRT further submits that it appears from the order dated 09.07.2008 that this Court has given a liberty to the aggrieved persons to challenge the



legality and correctness of the communication dated 10.05.2005 in appropriate proceeding in accordance with law, but till date no one has challenged the same even the petitioner has not challenged the same in the present writ proceeding and apart from that, the petitioner has never put his grievance before the respondent Board and he has filed this petition directly without approaching the Board.

9. In view of the aforesaid, it is admitted position that Board has not adopted the enhancement of age of retirement of the employee from 58 years to 60 years and the Board has rightly retired the petitioner from the service of the Board w.e.f., 31.08.2011 after attaining the age of 58 years and apart from that, the petitioner has never challenged the legality and correctness of the communication dated 10.05.2005, despite of liberty been granted to the petitioner and to other similarly situated persons.

10. In view of the aforesaid, there is no merit in the writ petition and this writ petition stands dismissed.

(Rajesh Kumar Verma, J)

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