
(2010) 04 PAT CK 0111
In the Patna High Court

Akhileshwar Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Evidence Act, 1872 — Section 114

Citation : (2010) 04 PAT CK 0111

Hon'ble Judges : Navin Sinha, J;Dinesh Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Navin Sinha and Dinesh Kumar Singh, JJ.—Heard learned Counsel for the appellant and learned Counsel for the State.

2. The original petitioner Kali Choudhary was deceased on 16.4.2002 during the pendency of the appeal and was substituted by his son Akhileshwar Choudhary.

3. The controversy concerns the date of birth of Shri Kali Choudhary who was appointed on 1.8.1969 as a helper originally in the Tenughat River Valley Project. He claims to have discovered an error in his date of birth recorded in the service book when the gradation list of Class-4 post in the Madhubani Collectorate at Bisfi, where he was then posted, was published on 13.9.1979 showing his date of birth as 1.8.1943. His contention was that his correct date of birth is 15.7.1951 according to the School Leaving Certificate dated 17.2.1962, and his date of superannuation in accordance with the same was 31.7.2009. Relying upon a transfer certificated No. 41 dated 2.1.1958 by the Head Master, Basic School, Lakhanpur the respondents fixed his date of birth as 1.8.1943. Consequently, he was made to superannuate on 31.7.1991 giving rise to the writ application.

4. The impugned judgement noticed that the counter affidavit specifically stated that transfer certificate No. 41 dated 2.1.1958 was furnished by Shri Kali Choudhary himself. No rejoinder to the counter affidavit was filed by Shri Choudhary leading the Court to hold that he cannot escape from the contents of

the certificate submitted by him though a feeble attempt was made to disown it. It was held that he had filed a belated application for correction of his date of birth seven days prior to his superannuation as determined by the authorities.

5. Learned Counsel for the appellant sought to persuade this Court that his date of birth entered in the service book at the time of entry into service was 15.7.1951, based on his school leaving certificate dated 17.2.1962. Before correcting the same to read as 1.8.1943 the petitioner was required to be given an opportunity to show cause why the correction be not made. The limitations of time which apply to Shri Kali Choudhary for making an application for correction of the date of birth shall equally apply to the respondents. They cannot be permitted to correct the same belatedly on 13.9.1992. The submission therefore was with regard to an error in the decision making process to change the date of birth done unilaterally to the prejudice to the appellant. It has additionally been urged that the appellate court had directed the State to produce the representation submitted by Shri Kali Choudhary along with the transfer certificate. That has not been produced.

6. We have considered the factual aspects of the matter. That the respondents may not have produced his representation before us does not appear very crucial to the decision of the case as we are satisfied that the writ petition itself raises serious disputed questions of facts with regard to the date of birth based upon the documents being furnished in support of the same which cannot be agitated in a writ petition.

7. The counter affidavit in the writ petition states that in the service book no date of birth of the petitioner was mentioned, but merely that his age was mentioned as 26 years with the endorsement within brackets that it was being recorded as per his declaration. Below that 31.12.1957 was mentioned in a different ink and different handwriting. If that was not enough to create factual controversies, if the petitioner had his school leaving certificate dated 17.2.1962 showing his date of birth as 15.7.1951 available with him when he came to be appointed on 1.8.1969, it is for him to answer why the specific date of birth was not incorporated in the service book and in its place the age 26 years was recorded. The submission that it was produced at the time of entry into service does not appeal to us as it becomes a disputed question of fact itself when there shall be a presumption of the correctness of the entries made in the service book originally u/s 114(e) of the Evidence Act to rebut the presumption of any school leaving certificate dated 17.2.1962 having been presented at the time of entry into service. It is also a disputed question of fact if the certificate No. 41 dated 2.1.1958 showing his date of birth as 1.8.1943 was produced by the petitioner separately when the respondents averred to that effect in their counter affidavit which was not denied by any rejoinder, as noticed in the impugned judgment also.

8. The factual scenario that emerges is of different dates of birth as 1.8.1943, 15.7.1951 and 31.12.1957. The submission that the correction in the date of

birth was allegedly made unilaterally in view of the aforesaid document itself becomes a disputed question of fact as to whether it was made on his application or on basis of the documents the knowledge of which he denies. When three dates of birth are surfacing from the records, we are satisfied that the correct date of birth, is clearly a disputed question of fact to be decided in a civil proceeding where evidence would have been led, both oral and documentary.

9. For reasons of the aforesaid discussion, in the entirety of the facts and circumstances of the case we are not satisfied that the impugned judgement warrants any interference.

10. The appeal is dismissed.