

(2019) 11 PAT CK 0086

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13484 Of 2006

Arjun Thakur

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Citation : (2019) 11 PAT CK 0086

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Lal Babu Singh, Alok Kumar Rahi

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner as well as learned counsel for the Respondent-State.
2. The petitioner has been made to retire under Office Order dated 08.07.2006 issued by the Executive Engineer, Gandak Yojana retrospectively w.e.f. 31.12.2004. The petitioner has challenged the said order.
3. It is the petitioner's case that the Service Book of the petitioner contained an entry with respect to his date of birth. Accordingly, his date of birth should have been taken by the Authorities as 1948. Instead thereof Authorities have proceeded to consider the petitioner's date of birth as being 04.12.1946. On such basis the petitioner has wrongly been made to retire ignoring the entry of date of birth in the petitioner's Service Book.
4. The records reveal that the Service Book of the petitioner initially recorded a date of birth which is 04.05.1948. The same has been crossed by pen and in its place it has been mentioned 1948 and the same has also been mentioned in words. The records further reveal that at the time of petitioner's appointment since no documentary evidence was available in respect of petitioner's date of birth, the determination of the petitioner's date of birth was done by the Civil

Assistant Surgeon by medically examining his appearance and also on the basis of the petitioner's own statement that he was 21 years old. He was, thus, determined to be 21 years old on 04.12.1967, when he had joined service.

5. Other than this, determination of the petitioner's age at the time of his joining, there is no contemporaneous document on record in support of any other date of birth. As per assessment of the Civil Assistant Surgeon and the petitioner's own statement he was allowed entry in service treating him to be 21 years on 04.12.1967. Same leads to an irresistible conclusion that the petitioner's date of birth was to be taken as 04.12.1946.

6. This is the specific case of the State in its counter affidavit as well as supplementary counter affidavit filed in the instant proceedings. Copy of the counter affidavit dated 20.12.2006 as well as the supplementary counter affidavit which has been filed after serving copy on the petitioner on 17.10.2014 have not been denied/disputed by filing any rejoinder/response in the instant proceedings.

7. The petitioner's counsel submits that the entry made in the Service Book should have been taken as the basis of determining the petitioner's date of retirement. It is his submission that the sanctity of the entry made in the Service Book cannot be doubted by any other document and, therefore, retrospective retirement of the petitioner treating his date of birth as 04.12.1946 is without any basis and legally unsustainable. Copy of the Service Book which has been placed on record by the State, which has not been denied/disputed till date by filing any rejoinder/reply, records the petitioner's date of birth as "1948 (One thousand nine hundred forty eight) as per his statement". This Court would observe that 1948 is a year. In the service Book other than the year, no date has been mentioned. In the circumstance, the only contemporaneous document which can validly be taken as determination of the date of birth, and which has remained unchallenged for all these years is the determination done by the Civil Assistant Surgeon in the Annexure- A series which is dated 04.12.1967, at the time of petitioner's initial entry in service.

8. From perusal of the same, it is apparent that immediately, upon submission of initial joining in service, petitioner claimed to be 21 years. The assessment of the Civil Assistant Surgeon was also the same. Therefore, the fact that the petitioner was assessed as 21 years at the time of joining in 1967 is founded on the contemporaneous document. There, is nothing else on record to sustain any other date of birth, and this position has not been challenged for so many years, as also in these proceedings. In fact, it is on basis of the document dated 04. 12.1967 that petitioner has gained entry in service and continued to serve for such a long time, i.e., about 39 years.

9. This Court is thus not inclined to interfere with the order dated 08.07.2006 purporting to retire the petitioner w.e.f. 31.12.2004. This Court, however, before parting with the judgment, would observe that the retirement of the petitioner should be w.e.f. 31.12.2004 without raising any liability of recovery against the

petitioner, on account of the fact that the Office Order directing for such retirement has been issued belatedly in the year 2006.

10. For all other practical purposes and for determination of his post retiral dues, the Authorities may, however, treat the petitioner to have retired on 31.12.2004.

11. The writ petition stands disposed of with the aforesaid observations and directions.