

---

**(2012) 03 PAT CK 0031**  
**In the Patna High Court**  
**Case No : CWJC No. 13997 of 2011**

Ashok Kumar @ Ashok Prasad

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

---

**Date of Decision :** 02-03-2012

**Acts Referred:**

**Citation :** (2013) 1 PLJR 22

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Advocate :** Shiv Kumar, for the Appellant; Prabhat Kumar Verma, for the Respondent

---

## Judgement

Ajay Kr. Tripathi, J.—Petitioner wants quashing of the Order No. 892 issued vide Memo No. 6917 dated 3.11.2001 by virtue of which the respondent-Bihar State Road Transport Corporation (hereinafter to be referred to as the Corporation) has fixed the age of the petitioner as 23.12.1951 instead of 2.1.1956. Such an order contained in Annexure-4 is under challenge and has been termed to be arbitrary and contrary to records. The primary contention on behalf of the petitioner is that unilateral decision to change the date of birth or the age of the petitioner in the service book after 30 years of appointment is an abuse of power. No change in the date of birth could have been entertained, which was recorded on the basis of school records and whether such a change could be brought about detrimental to the interest of the petitioner without there being any material available in this regard.

2. Accepted position of the petitioner is that he was appointed on compassionate ground as a helper on 16.5.1973 under the Corporation. He was less than 18 years of age when appointment came about. According to him, the date of birth recorded in the service book initially was 2.1.1956 on the basis of his registration before the Bihar School Examination Board in the year 1973. He did not pass the matriculation examination despite two attempts in 1973 and 1974 but he did qualify in the year 1975. The marks-sheet issued by the Bihar School

Examination Board is annexed as Annexure-1.

3. A circular was issued on 29.6.1994 by the respondent authorities, which is Annexure-2 to the writ application. In this circular it was indicated to one and all that all the employees who were appointed under the respondents would be treated to be a minimum of 18 years of age on the date of appointment and their age would be fixed accordingly and necessary correction made in the service book. Petitioner was subjected to Medical Board in the year 2000 and the Medical Board assessed the age of the petitioner between 48-50 years. Vide Annexure-4 the age of the petitioner was treated to be 49 years and therefore, the date of birth in the service book was changed to 23.12.1951.

4. it is the case of the petitioner that he has been filing applications before the respondent authorities that on the basis of the date of birth given in the matriculation certificate, if not registration with Bihar School Examination Board, initially in the year 1973 his date of birth should be treated as 2nd January, 1956 but no decision was taken by the respondents in all these years and now he is being compelled to retire on the basis of Annexure-4, which has fixed his age to be 23.12.1951, thereby compelling the petitioner to lose a good 5 years of service since he was being made to retire w.e.f. 31.12.2011 as would be evident from Annexure-6, which has been annexed with I.A. 8194 of 2011. Petitioner wants quashing of this letter also. I.A., therefore, is allowed.

5. Stand of the respondent Corporation is that it is a belated kind of writ application which has been filed after almost 10 years of the issue being settled. So far the claim of the petitioner that he was compelled to go before a Medical Board, he was not alone in being subjected to a medical test. Since there was dispute with regard to large number of employees as to what their date of birth or age would be, majority of them belonging to Class-IV category, vide circular contained in Annexure-3 Medical Board was constituted and petitioner did appear before the Medical Board. There is nothing to show that it was under threat and coercion applied on the petitioner. The assessment of the Medical Board was that the age of the petitioner on the date of examination was between 48-50 years and therefore, taking 49 the mid-age, the date of birth in the service book was entered or corrected.

6. It is also their case that at no point of time petitioner raised any issue on this question before filing the present writ application. There is no record to show that there was any resistance to the decision taken by the respondents at least in the official records. It is also further urged that this is an afterthought that the petitioner is trying to claim benefit of date of birth on a so-called matriculation certificate, that too relating to the year 1973. Even if he got himself registered but at that point of time he had never produced any document on the basis of matriculation certificate to claim the benefit of a date of birth. If the petitioner had cleared his examination in the year 1975, which is being claimed by him, he would have surely produced that certificate at the time when he was being subjected before the Medical Board to assess his age by producing the said

matriculation certificate. The Corporation does not want to comment on the validity or the utility of the matriculation certificate now but the petitioner having acquiesced to a decision which was taken and communicated to the petitioner as far back as in the year 2001 cannot be allowed to alter that situation on the plea which is sought to be raised now.

7. There is no denial by the petitioner that petitioner was subjected to a Medical Board like many other employees to assess the age as there were discrepancies with regard to date of birth, especially for employees belonging to his category. In the opinion of the Medical Board 48-50 years was assessed and the date/year of birth was entered in the service book accordingly in the year 2001. Once having accepted that position, on the verge of retirement petitioner is now making yet another case which ought not to be because there may not be an occasion for the respondents to undo what was already done more than a decade ago. There is a categorical assertion that at no point of time the so-called matriculation certificate which has been attached or produced before the Court was pressed into service before the respondent authorities. If it was done any time before his age was assessed by the Medical Board and if this material was available, there may not have been an occasion to subject the petitioner before the Medical Board. Obviously this plea or evidence has been procured to draw advantage now.

8. There are no clear answers emerging from the petitioner with regard to the time frame when Annexure-4 was issued and the time when the writ application has been filed. Obviously the petitioner's response, now, to the decision of the respondent authorities is an afterthought after many years to somehow manage to enhance the age of retirement by one means or the other. To that extent the response put up by the Corporation that the matriculation certificate now annexed with the writ application cannot be the subject matter of any decision to change the date of birth of the petitioner now at the fag end of his retirement does merit consideration.

9. One thing, however, the Court must record is about law being well settled by several decisions of this Court including a Division Bench decision rendered in the case of Bihar Electricity Board Vs. Bihar Powers Workers Union and Others, . It held that whenever assessment of age is made by the Medical Board, an employee should get the benefit of lesser age determined by the Medical Board.

10. In the present case assessment of age between 48-50 years for the petitioner was made by the Medical Board. The decision of the respondent authorities assessing the age of the petitioner as 49 years, i.e. mid-age, seems to be contrary to law laid down by this Court in several cases. If that be so, then the petitioner ought to have been given the benefit of 48 years of age rather than 49 years.

11. The Court therefore is not inclined to give to the petitioner benefit of a different date of birth, more so when petitioner did not choose to assail

Annexure-4 at any point of time earlier before this Court. However, the respondent authorities will be advised to re-work the date of retirement of the petitioner on the basis of 48 years of age as per the age assessed by the Medical Board in the year 2001, instead of 49 years which has been given by the respondent authorities by way of Annexure-4. Writ is otherwise dismissed except to the extent indicated above.