**(2000) 12 PAT CK 0030**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 2978 of 1999

Bedamo Devi APPELLANT

Vs

The Managing Director RESPONDENT

**Date of Decision :** 06-12-2000

**Acts Referred:**
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

**Citation :** (2001) 2 BLJR 874 : (2001) 2 PLJR 56

**Hon'ble Judges :** S.K. Katriar, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to quash officer order No. 1815, dated 29.10.1996 (Annexure-6), whereby the date of birth of the petitioner''s late husband had been determined to be 26.1.1928, and for the consequential reliefs.

2. The petitioner''s husband, Ram Kishun Ram deceased, was appointed as a temporary Khalasi in the Quondam Rajya Transport, underthe Transport and Political Department, Government of Bihar, on 26.1.1953. The Bihar Government had constituted the Bihar State Road Transport Corporation in 1959, a public sector undertaking, to ply buses to carry passengers to different destinations in Bihar, and perhaps outside Bihar also. All employees of the aforesaid Rajya Transport including Ram Kishun Ram were automatically absorbed in the services of the Bihar State Road Transport Corporation (hereinafter referred to as the Corporation"), with effect from 1.4.1959. By letter dated 16.5.1978 (Annexure-A), the Corporation had informed Ram Kishun Ram that his service book had not till then been opened. He was, therefore, called upon to apprise the Corporation of his date of birth with the requisite proof. Ram Kishun Ram did not respond, and reminders dated 5-12-1979 and 2-9-1992 were issued to him. He again did not respond and, therefore, the Corporation had issued its letter dated 4.11.1992 (Annexure A/1), giving him the last opportunity to submit his date of birth with

 

proof thereof, failing which the Corporation will treat him to be of 25 years of age on the date of joining. He was again issued reminder dated 9.11.1992 (Annexure A/2), in response to which he submitted transfer certificate dated 20.8.1976 (Annexure-B) which stated that 5.1.1935 was his date of birth. It appears from the letter dated 16.12.1992 (Annexure-C) that the certificate raised suspicion and, therefore, it was decided that the same should be inquired in depth. The inquiry was concluded by letter dated 13.1.1993 (Annexure-D), from the Headmaster of the school concerned to the Corporation, that the aforesaid certificate dated 20-8-1976 (Annexure-B) was a forged and fabricated document. This led to the impugned order dated 29-10-1996 (Annexure-6), whereby 26-1-1928 was determined to be the date of birth of Ram Kishun Ram. Therefore, he ought to have retired from the service of the Corporation with effect from 31.1.1986, whereas he had actually overstayed and worked beyond his age of superannuation from 1.2.1986 to 31.1.1993. The impugned order, therefore, seeks to recover all the excess payment made to Ram Kishun Ram for the period from 1.2.1986 to 31.1.1993. It is relevant to state that the Corporation had also lodged an F.I.R. against Ram Kishun Ram, and he was put on trial. By judgment dated 8-9-1997 passed by Mr. Brij Mohan Singh, Judicial Magistrate, 1st Class, Patna, Ram Kishun Ram was convicted under Sections 467, 468, 471 and 420, IPC and was sentenced to three years'' rigorous imprisonment along with fine of Rs. 500/-. No appeal was preferred against the judgment which became final. Ram Kishun Ram ultimately died on 9-2-1998.

3. None appears on behalf of the petitioner in support of the writ petition. The matter was taken up and heard at length on 18.10.2000 on which date itself the matter could have been concluded but was adjourned only to enable the learned Counsel for the petitionerto appear. However, Mr. R.K. Verma, learned Counsel for the Corporation, has ably assisted the Court. In view of the fact that none appeared in support of the writ petition, this Court has given its anxious consideration to the pleadings on record and the submissions made at the bar.

4. Having considered the various aspects of the matter, I am of the view that this writ petition ought to be dismissed. In view of the letter dated 13.1.1993 (Annexure-D), which is a letter from the Headmaster of the school concerned to the Corporation, there is not the slightest manner of doubt that the transfer certificate was a forged and fabricated document. The Headmaster states in his letter that the transfer certificate bears the signature of one Chaturbhuj Prasad, who was not the Principal on the date of issue of the certificate but, in fact, Sri Ram Nandan Singh was the Headmaster of the school from an earlier date. It is manifest that it was for these reasons that Ram Kishun Prasad had failed to reply to the various letters of the Corporation calling upon him to furnish the proof as to his date of birth. He was obviously planning and contriving to meet the situation by manufacturing the document. In that view of the matter, I have not the slightest manner of doubt that the aforesaid transfer certificate dated 20.8.1976 (Annexure-B) was forged and fabricated document. In that view of the matter, the Corporation''s decision determining 26.1.1928 to be the date of birth

 

cannot be faulted.

5. Then arises the question of recovery from the dues admissible to the petitioner''s late husband or to the petitioner herself on account of his overstay in the service of the Corporation for the period from 1.2.1986 to 31.1.1993. Although it is settled by a long line of cases that if an employee receives money benefit in excess of his entitlement then the same should normally not be required to be refunded after he has superannuated or has died. This broad proposition is subject to two exceptions-firstly, if the order giving the money benefit clearly stipulates that the same money benefit is being given subject to the fulfilment of a particular condition or subject to approval of a higher authority failing which the money benefit can be recovered even after superannuation. Secondly, if the employee has received the money benefit on account of fraud, misrepresentation or the like attributable to him, then the recovery can be made. The present case is sqarely covered by the latter proposition. Therefore, I have no hesitation in coming to the conclusion that the Corporation is entirely justified in ordering recovery of the excess payment made to Ram Kishun Ram or to his widow (the present petitioner) for the period of his overstay in the service of the Corporation from 1.2.1986 to 31.1.1993.

6. In the result, this writ petition is dismissed, and the impugned order No. 1815, dated 29.10.1996 (Annexure-6), is hereby upheld. Petition dismissed

 