
(2013) 03 JH CK 0118
In the Jharkhand High Court
Case No : WP (S) No. 6260 of 2003

Bhagirathi Singh

APPELLANT

Vs

The Jharkhand State Electricity Board through its Chairman
and Others

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Citation : (2013) 3 AJR 748 : (2013) 2 JLJR 326

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Jay Shankar Tiwary, for the Appellant; A.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—The petitioner has challenged the validity of order dated 4.9.2003, whereby he has been made to retire on 31st January, 2004. The petitioner was appointed as Foreman in the year 1965 at Patratu Thermal Power Station, Patratu. On 17.11.2000, the petitioner was directed to appear before the Medical Board for determining his date of birth. Again on 1.2.2001 and 21.6.2001, the petitioner was directed to appear for medical check up. The petitioner got himself examined in the Rajendra Institute of Medical Sciences (R.I.M.S.), Ranchi on 1.2.2003, when his age was assessed as 57 years as on January, 2003. However, by order dated 4.9.2003, the petitioner was made to superannuate w.e.f. 31.1.2004 on the basis of his date of birth recorded in the Service Book as 6.1.1944. The petitioner has submitted his representation on 10.12.2002, however, his representation was not decided and he, in terms of order dated 4.9.2003, was made to retire w.e.f. 31.1.2004 and therefore, the petitioner was constrained to move this Court.

2. A counter-affidavit has been filed on behalf of the respondents, stating that in the year 2001, when the matter of tempering of date of birth in the Service Book of several workmen came to the notice of Patratu Thermal Power Station, 126

workmen were directed to undergo medical examination for determination of their age. However, the union of said workmen moved the High Court in C.W.J.C. No. 290 of 2001 Reported in Bihar Rajya Vidyut Mazdoor Union Vs. Bihar State Electricity Board contending that they cannot be directed to appear before the Medical Board at the verge of their retirement. The writ petition was disposed of with a direction to the employees to furnish documentary evidences in support of their age to the authority and if the authority was not satisfied with the documents furnished by the employees, then the authority was permitted to direct the employees to undergo the medical examination. The "Bihar Rajya Vidyut Mazdoor Union" preferred Letters Patent Appeal, which was disposed of on 24.2.2003 constituting a one-man Tribunal to examine/scrutinize and consider the cases of all the workmen for determining their date of birth and if necessary for undergoing medical examination. It was further ordered that if a workman does not have any documentary evidence in support of his date of birth and if the Tribunal finds that there is no need to refer the workman to the Medical Board, the date of birth recorded in the Service Book would be considered conclusive. Pursuant to the direction passed by the High Court in L.P.A. No. 20 of 2002, the petitioner did not appear before the Tribunal and as such, his date of birth as recorded in the Service Book on 6.1.1944 was accepted and he superannuated from service w.e.f. 31.1.2004.

3. Heard counsel for both the parties and perused the documents on record.

4. Learned counsel for the petitioner has submitted that as on January, 2003 the age of the petitioner was assessed as 57 years and as such he was entitled to retire on 31.1.2006. The medical examination of the petitioner was conducted at the instance of the respondents and as such the age of the petitioner as assessed by the Medical Board should have been accepted by the respondents.

5. On the other hand, the learned counsel for the respondents has submitted that on 1.2.2003, when the petitioner was examined at Rajendra Institute of Medical Sciences, Ranchi, although the age of the petitioner was assessed as 57 years, however, it was not conclusive and was observed that it could vary by two years on both sides. He has further submitted that in spite of direction of the High Court, he did not appear before the Tribunal and therefore, his date of birth as recorded in the Service Book was taken as correct and conclusive and accordingly, he was made to retire on 31.1.2004.

6. From the record of the case, I find that it was not the petitioner who had questioned the correctness of his date of birth as recorded in the Service Book. When the matter of tampering of date of birth by the workmen came to the notice of respondents, 126 workmen were directed to get themselves medically examined and in view of order passed in L.P.A. No. 20 of 2002, the workmen were required to appear before the Tribunal. However, the petitioner did not appear before the Tribunal and on the basis of the service record produced by the Presiding Officer, Patratu Thermal Power Station, date of birth of the petitioner was accepted as 6.1.1944. I am of the opinion that whether the

petitioner has appeared before the Tribunal or not and whether he was examined by the Medical Board on 1.2.2003 or not, these are irrelevant for deciding the present controversy. Admittedly, it is not the petitioner, who has raised the claim with respect to correction in his date of birth as recorded in the Service Book and therefore, the petitioner cannot be permitted to raise such a claim even if in the Medical Report dated 1.2.2003, his age was assessed as 57 years. The date of birth of the petitioner as recorded in the Service book was never challenged by the petitioner and therefore, there is no illegality, if his date of birth as recorded in the Service Book has been accepted by the respondents. A workman is entitled to get his date of birth corrected within the period stipulated in the Service Rules/Circular and if no period is stipulated, it should be done within a reasonable period. In any event, at the fag end of service, the workman cannot be permitted to raise the claim with respect to correction in the date of birth. In this view of the matter also, the petitioner could not have raised a dispute with respect to any claim for correction in his date of birth.

7. In the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, , the Hon"ble Supreme Court has interfered with the order passed by the Tribunal, whereby an application filed after 33 years of service and about one year before superannuation seeking correction in the date of birth was allowed by the Tribunal. In the said case, the Hon"ble Supreme Court has held that the application seeking correction in the date of birth should be made within the time fixed by any rule or order and in the absence of any rule or order, it should be made within a reasonable time.

8. In the case of State of U.P. and Others Vs. Smt. Gulaichi, , the Hon"ble Supreme Court has interfered with the order, whereby a correction in the date of birth recorded in Service Book was allowed at the verge of retirement. Similar is the view taken by the Hon"ble Supreme Court in the case of " State of T.N. Vs. T.V. Venugopalan, . In view of the aforesaid discussion, the present writ petition is dismissed.