
(2022) 12 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4444 Of 2013

Chitra Ray And Others

APPELLANT

Vs

Vinoba Bhawe University And Others

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Citation : (2022) 12 JH CK 0002

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Parambir Singh Bajaj, Indrani Sen Choudhary, Amit Kumar Sinha

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Parambir Singh Bajaj, Advocate, Learned Counsel appearing on behalf of the petitioner. Heard the learned counsels appearing on behalf of the Respondents.

2. This writ petition has been filed for the following reliefs:

"A. Quashing of Memo No. VBU/Esstt./1032/12 dated 26.06.2012 issued by the Respondent No. 2 whereby and wherein the Respondent No. 2 under directions of the Respondent No. 1 has been pleased to withhold the salary of the petitioner on the alleged ground of irregularities in the date of birth, reported by the Principal of the concerned college;

B. Quashing of Letter bearing Reference No. KBW/578/12 dated 03.12.2012 issued by the K. B. W. College, Hazaribagh under the seal and Signature of the Principal of the concerned College, whereby the Respondent No. 3 has illegally and arbitrary restrained the petitioner from discharging her duties as Lecturer, Department of Psychology;

C. Consequently commanding upon the Respondents to pay the arrears of salary

of the petitioner withheld from the Month of June, 2012 till date and also the current salary of the petitioner and Permit the petitioner to discharge her duties as Lecturer in the Psychology Department, in K. B. Women's College, Hazaribagh as the petitioner has been stopped from rendering her duties in utter disregard to principles of natural justice and gross violation of her legal and fundamental rights."

3. I.A. No. 1623 of 2014 seeking amendment was disposed of whereby following prayer has been inserted:

"1(d) Quashing of Order dated 12.02.2014 passed by the Respondent No. 2 and communicated to the petitioner vide Letter bearing Reference No. VBU/P/R/195/2014 dated 12.02.2014, whereby and whereunder, the Respondent No. 2 on the basis of an internal inquiry conducted by a Committee constituted by the Respondent- University, has held that the date of birth entered in the Service Book of the petitioner is on the basis of forged certificate tampered by interpolating the digits "48" to "53" and that the petitioner ought to have retired on 08.01.2010 on the basis of report of the Committee and, therefore, under the direction of the Respondent No. 1 has treated the petitioner as superannuated w.e.f. 31.01.2010;

(e) quashing of Letter bearing Reference No. P/R/196/14 dated 12.02.2014 issued by the Respondent No. 2 asking the petitioner to show cause as to why not the excess amount drawn by the petitioner from 01.02.2010 to 25.06.2012 be recovered on the alleged ground that the petitioner on the basis of fake certificates of date of birth has continued in service from 01.02.2010 to 25.06.2012, which is contrary to the date of birth mentioned in the Admission register of S.S.L.N.T. Women's College, Dhanbad."

Arguments of the Petitioner

4. Learned counsel for the petitioner has submitted that the petitioner was working in K. B. Women's College, Hazaribagh and as per service record, her date of birth was recorded as 08.01.1953. She passed the matriculation examination in the year 1964, but the matriculation certificate does not record her date of birth. She was appointed as lecturer on temporary basis in Department of Psychology as back as on 04.09.1981 and was throughout working in the college.

On the basis of the aforesaid date of birth, the petitioner was scheduled to retire on 31.01.2015. However, on 03.12.2012, an order was passed restraining the petitioner from discharging her duties and the petitioner was paid salary till the month of June as she had worked till 26.06.2012.

5. An enquiry was started regarding the date of birth of the petitioner. The learned counsel has submitted that the document on the basis of which the date of birth was recorded as 08.01.1953 was issued by the college namely S.S.L.N.T. Mahila Mahavidyalaya and the said document has been filed by the respondents

as Annexure- D to the counter-affidavit. He submits that the petitioner had studied in the said college and the date of birth, as per the said document, has been mentioned as 08.01.1953. The learned counsel has submitted that the petitioner was asked to produce the original of the same, but she could not produce the same by stating that there was a theft in her house and in the said theft, all the original documents were taken away and an FIR was also lodged. Annexure- 5 is the response filed by the petitioner which is dated 29.06.2012.

6. The learned counsel for the petitioner further submits that the date of birth of the petitioner was recorded in the service book as 08.01.1953 on the basis of Annexure- D to the counter-affidavit long back and at the fag end of her service period, the respondents had raised a dispute in connection with the date of birth of the petitioner. He submits that such recording of date of birth in service book remained undisputed for pretty long time since 15.09.1983 when the service book was opened and it was not open for the respondents to revisit the date of birth of the petitioner and come to a different date. The impugned order treating the date of birth of the petitioner as 08.01.1948 has been passed at the fag end i.e. after 29 years of service. He also submits that all the documents including PAN, Aadhar, Etc. indicate that the date of birth of the petitioner is 08.01.1953. The learned counsel has also submitted that principles of natural justice have not been adhered to as no show-cause was provided to the petitioner and an internal enquiry was conducted without giving an opportunity to the petitioner.

7. Learned counsel for the petitioner has further submitted that one I.A. No. 194 of 2017 was filed with a prayer to regularize the services of the petitioner with retrospective effect. He submits that the said interlocutory application was allowed and therefore, such prayer may also be considered. He further submits that another interlocutory application being I.A. No. 1623 of 2014 was filed seeking quashing of memo dated 12.02.2014 issued by the Registrar, Vinoba Bhave University for explanation of the excess salary drawn by the petitioner from 01.02.2010 to 25.06.2012. However, the said communication dated 12.02.2014 was merely a show-cause and the petitioner is not aware as to whether any final order has been passed on the same or not.

Arguments of the Respondents.

8. The learned counsel appearing on behalf of the respondent-University, on the other hand, has submitted that admittedly the services of the petitioner has not yet been regularized. She has referred to the counter –affidavit and submits that the documents were required to be submitted for the purposes of regularization, but the petitioner did not submit the original documents including the document in connection with her date of birth and consequently, an enquiry was sought to be made regarding her actual date of birth. She submits that the internal enquiry report is contained at Annexure- G and from the perusal of the same, it appears that the Vice Chancellor, Vinoba Bhave University, Hazaribag had constituted a committee to enquire into the matter relating to irregularities found in the date of birth of the petitioner. She submits that the document on the basis of which

the date of birth of the petitioner was recorded in her service book, was found to be doubtful and therefore, in order to know the actual date of birth, the petitioner was asked several times to submit original certificates in support of her date of birth. She also submits that it has been recorded in the enquiry report that, in reply the petitioner submitted a certificate from the Principal, Rajkiyakrit Ram Bilas 10+2 (Intermediate) School, Bermo dated 30.11.2007 indicating that petitioner had passed her higher secondary examination in the year 1964 from the school, but the date of birth was not mentioned in the original certificate and cross-list. The petitioner had also submitted that there was a theft in her dwelling house on 24.05.1993 and all the valuables including the original certificate granted by the Principal, S.S.L.N.T. Mahila Mahavidyalaya were taken away and an FIR was also lodged. Although no copy of the FIR was produced. The learned counsel also submits that it has also come in the enquiry report that the petitioner had passed BA –II (pass) from Ranchi University, S.S.L.N.T. Women's College, Dhanbad and the Principal of S.S.L.N.T. Mahila Mahavidyalaya, Dhanbad had supplied an attested photocopy of admission register for session 1965-67. She submits that according to the said register, the petitioner was admitted in the college on 07.09.1965 and her date of birth, as per the record of S.S.L.N.T. Mahila Mahavidyalaya, Dhanbad, was 08.01.1948. The learned counsel submits that on the one hand, the petitioner was not able to substantiate her date of birth as 08.01.1953 and on the other hand, the same college where she had studied i.e. S.S.L.N.T. Mahila Mahavidyalaya, Dhanbad, had sent the record to show that the date of birth of the petitioner was recorded as 08.01.1948. The learned counsel submits that on the basis of such enquiry, the date of birth of the petitioner was taken to be 08.01.1948. She also submits that certain more materials were also considered to determine the date of birth of the petitioner as 08.01.1948. The learned counsel submits that the petitioner was granted full opportunity to substantiate her date of birth and ultimately, when the verification was made from S.S.L.N.T. Mahila Mahavidyalaya, Dhanbad, where she had studied, the date of birth as per the records of the college was ultimately found to be 08.01.1948 and therefore, there is no illegality or perversity or violation of the principles of natural justice in the impugned action and the order of the respondents.

9. So far as the claim for regularization is concerned, the learned counsel submits that no such relief may be granted as the petitioner has not been able to substantiate her case. The learned counsel for the respondents has further submitted that no order is on record either regularizing the services of the petitioner or declining to regularize the services of the petitioner by the Hon'ble Chancellor.

10. Learned counsel for the respondents has also submitted that so far as recovery of excess salary is concerned, to the best of her knowledge, no final order has yet been passed. The learned counsel submits that having found the date of birth as 08.01.1948, all consequences should follow.

11. She submits that under the aforesaid facts and circumstances, the petitioner is not entitled to any relief as prayed for in this writ petition.

12. The learned counsel for the respondent no. 4 - S.S.L.N.T. Mahila Mahavidyalaya, Dhanbad has submitted that as per the records available with respondent no. 4 from where the petitioner had done her graduation, the date of birth of the petitioner as per the records is 08.01.1948 and not 08.01.1953.

Rejoinder arguments of the Petitioner.

13. In rejoinder, the learned counsel for the petitioner has relied upon a judgement passed by the Hon'ble Supreme Court reported in (2022) 6 SCC 211 (Shankar Lal Vs. Hindustan Copper Limited and Others) (para 27 to 29) to submit that the date of birth cannot be disturbed at the far end of service.

Findings of this Court

A. I.A. No. 194 of 2017

14. I.A. No. 194 of 2017 was filed with a prayer seeking direction upon the respondents to regularize the services of the petitioner with retrospective effect. As per the order sheet I.A. No. 194 of 2017 was never allowed earlier by this court.

15. As per the interlocutory application being IA No. 194 of 2017, the matter regarding regularization of the petitioner is pending for consideration by the Screening Committee before the Hon'ble Chancellor and a prayer was also made to add the OSD (J) to Hon'ble Chancellor, (Governor) Raj Bhawan, Ranchi as Respondent no. 5. The records of the case reveal that vide order dated 21.02.2017, the aforesaid authority was added as respondent no. 5 and it was observed that so far as the amendment in the prayer portion of the writ application is concerned, the same shall be considered after appearance of the newly added respondent i.e. respondent no. 5.

16. Counter-affidavit of respondent no. 5 was filed on 24.01.2018 wherein it was stated that pursuant to the representation for confirmation of service by the petitioner on 29.05.2000, a report was sought for from the university. Accordingly, a letter no. 2374 dated 18.07.2000 was communicated to the Vice Chancellor of Vinoba Bhave University, Hazaribagh, but pursuant thereto no report was submitted and reminders were also issued. Thereafter, certain documents were sent by the university vide letter no. 1166 dated 31.07.2003. However, the entire requirement under law was not sent and on 25.08.2003, the Principal Secretary to the Hon'ble Governor cum Chancellor directed the vice chancellor of the university to take appropriate decision in accordance with Rules and Regulations under intimation to him by September, 2003, but no such decision was communicated by the University to the respondent no.5.

17. It was also mentioned in the counter-affidavit that vide order dated 02.12.1998, another person namely Namita Gupta was declared to be senior to

the petitioner and the State Government had sanctioned only one post in the department of Psychology in K.B. Women's College Hazaribagh vide order dated 29.01.1995 and it was not clear as to whether any additional post had been sanctioned.

18. The claim for regularization of the petitioner was also opposed by referring to various circulars asserting that the petitioner does not satisfy the required condition for regularization. It was also stated that the foundational pleading with regard to regularization was not available in the writ petition or the interlocutory application filed by the petitioner.

19. The records of the case indicate that the I.A. No. 194 of 2017 was ultimately never allowed by this Court and it remained pending although respondent no. 5 was added vide order dated 21.02.2017.

20. Accordingly, the argument of the learned counsel for the petitioner that I.A. No. 194 of 2017 was allowed, is contrary to the records of this case. As I.A. No. 194 of 2017 was never allowed by this Court earlier and thus the averments made therein never formed a part of the writ records, accordingly, this Court is not inclined to issue any mandamus upon the respondents to regularize the services of the petitioner in this writ petition. However, it will be open to the petitioner to seek appropriate remedy in connection the relief prayed for in IA No. 194 of 2017 in accordance with law and as permissible under law.

21. Thus, I.A. No. 194 of 2017 is hereby closed.

B. W.P.(S) No. 4444 of 2013

22. This writ petition is confined to the original prayer made in the writ petition and the prayer included vide I.A. No. 1623 of 2014 which was disposed of vide order dated 23.01.2015. The prayers have already been quoted above.

23. This Court finds that the foundational facts are not in dispute. The petitioner had passed matriculation in the year 1964, Bachelor of Arts in Psychology in the year 1970 and MA (Psychology) in the year 1973 and in none of the certificate of educational qualification, her date of birth was recorded. The petitioner was appointed as lecturer on temporary basis in the Department of Psychology on 04.09.1981 in the college namely K. B. Women's College, Hazaribagh. She was granted UGC scale as per revised scale with effect from 01.01.1986. Initially the services of the petitioner were under Ranchi University, but in the year 1994, Vinoba Bhave University came into existence and the college of the petitioner came under Vinoba Bhave University.

24. As a proof of her date of birth , the petitioner had submitted a certificate dated 17-7-70 issued by the college under the signature of the Principal of the college where she had studied i.e. Shree Shree Lakshmi Narain Trust Mahila Mahavidyalaya (hereinafter referred to as SSLNT College) where she was a regular student and as per the certificate her date of birth as mentioned in the records of the college was 08.01.1953 and her registration number and other

details were also mentioned in the certificate dated 17-7-70. It is further not in dispute that in the records of the respondents, only an attested copy of the certificate dated 17-7-70 was available, which was duly attested on 06.12.1985 by the Accounts Officer of Ranchi University. As per the available records, the petitioner was scheduled to retire on 31.01.2015. Admittedly, till the year 2012, the services of the petitioner were not regularized. From the records of the case, it is apparent that the matter regarding regularization of services of the petitioner remained pending before the screening committee.

25. A letter dated 17.02.2012 (Annexure-C) was issued to the petitioner by K.B. Women's College to submit all the relevant documents. Another letter dated 13.04.2012 (Annexure-C/2) was issued to the petitioner asking her to submit her matriculation certificate for verification of her date of birth. However, the matriculation certificate of the petitioner did not record the date of birth of the petitioner.

26. It is apparent from the internal enquiry report quoted later in this judgement, that the date of birth as recorded in the Service Book of the petitioner was 08-01-1953, which was based on the photo copy of a certificate issued by Principal, SSLNT College, Dhanbad on 17-7-70 and attested by the Accounts Officer, Ranchi University, Ranchi on 6-12-85. A letter dated 18.05.2012 was issued by the Principal of K.B. Women's College, Hazaribagh to the principal SSLNT College, Dhanbad forwarding a copy of the aforesaid certificate dated 17-7-70 for verification. In response, SSLNT College forwarded a copy of the admission register showing the date of birth of the petitioner as 08.01.1948.

27. Consequently, the petitioner was issued an office order dated 26.06.2012 (Annexure-3) by the university withholding the salary of the petitioner in view of the irregularities found in date of birth as reported by the Principal of K.B. Women's College, Hazaribagh vide letter dated 22.06.2012. Another order dated 03.12.2012 (Annexure-1) was issued to the petitioner restraining the petitioner from discharging her duties. It was mentioned in the said letter dated 03.12.2012 that as per the records of SSLNT College, the petitioner ought to have retired in the month of January, 2010 and that an enquiry committee was set-up for enquiry from the petitioner.

28. A show-cause dated 26.06.2012 was issued to the petitioner by Vinoba Bhave University mentioning therein that production of certificate by the petitioner issued by SSLNT College showing her date of birth as 08.01.1953 was apparently an act of interpolation/manipulation which was enquired into by the principal of the college and after due enquiry, the date of birth of the petitioner has been found to be 08.01.1948 and consequently, the petitioner had to retire in the month of January, 2010. The show-cause was issued as to why a criminal case of fraud and forgery be not initiated against the petitioner upon initiating disciplinary proceeding as per applicable rules.

29. The petitioner filed her response to the said show-cause notice dated 26.06.2012, stating that in any of the documents of the petitioner, the date of birth is not recorded and therefore, the certificate issued by SSLNT College was submitted by the petitioner and in the certificate, the date of birth has been recorded as 08.01.1953. It was submitted that the authorities of SSLNT College, have not denied having issued the certificate, but as per the records of SSLNT College, the date of birth of the petitioner has been recorded as 08.01.1948. It was also mentioned in the reply that the said certificate issued by SSLNT College showing the date of birth of the petitioner as 08.01.1953 was duly recorded to have been verified by the principal of K.B. Womens' College in her service book where the petitioner was working since 1981 and the certificate was also duly attested in the year 1985 by the Accounts Officer of Ranchi University. The petitioner had also stated that in absence of the original certificate having been shown, neither the same could have been recorded as verified nor the same could have been attested. While explaining the reason for non-production of the original certificate, the petitioner stated that the certificate stood stolen and was not in her possession and in the year 1993, she had lodged one First Information Report and she asserted that in aforesaid circumstances, the certificate produced by the petitioner in support of her date of birth cannot be said to be a forged one. The petitioner also relied upon PAN card and Aadhar Card issued to her showing her date of birth as 08.01.1953.

30. The present writ petition was filed on 23.07.2013 challenging the order dated 26.06.2012 passed by the respondent no. 2 whereby the salary of the petitioner was withheld. The petitioner also challenged the order dated 03.12.2012 whereby the K.B. Women's College, Hazaribagh had restrained the petitioner from discharging her duties and prayed for payment of arrears of salary withheld from the month of June, 2012. Through amendment petition, the petitioner challenged the order by which the Respondent No. 1 treated the petitioner as superannuated w.e.f. 31.01.2010 and also challenged the show cause notice seeking recovery of the excess amount drawn by the petitioner from 01.02.2010 to 25.06.2012.

31. The respondents have filed a counter-affidavit in the present case bringing on record a report on enquiry committee relating to irregularities in the date of birth of the petitioner (Annexure-G). As per Annexure- G, it is apparent that the Vice Chancellor, Vinoba Bhave University, Hazaribagh had constituted a committee comprising of three members to enquire into the matter relating to irregularities found in the date of birth of the petitioner which was pointed out by the principal of K.B. Women's College, Hazaribagh where the petitioner was working. The members of the committee visited K.B. Women's College, Hazaribagh on 12.10.2012 and\ discussed the matter with the principal and they collected relevant documents and also discussed the matter with the petitioner. The said document as contained in Annexure-G refers to the verification of record and the recommendations which are quoted as under:

"Verification of Records: As per the Service Book maintained in KB Women's College, Hazaribag, Mrs Chitra Roy joined on 04-09-1981 as a temporary lecturer of Psychology. The date of birth recorded in the Service Book is "8-1-53", which is based on the photo copy of a certificate issued by Principal, Shri Shri Laxmi Narayan Trust Mahila Mahavidyalaya, Dhanbad on 17-7-70 and attested by the Accounts Officer, Ranchi University, Ranchi on 6-12-85. The date of birth (8-1-53) is mentioned in the certificate only in 'digits' and not in 'words'. In the aforesaid attested photo copy of the certificate submitted by Mrs Chitra Roy, two digits indicating year of birth i.e. "53" prima-facie appears to have been altered and written in 'hand writing', whereas 'day' and 'month' i.e. "8" and "1" is typed one.

To know the actual date of birth, the Principal of the College, asked Mrs Chitra Roy, several times, to submit original certificates in support of her date of birth. In reply Mrs. Chitra Roy submitted a certificate from the Principal, Rajkiyakrit Ram Bilas 10+2 (Intermediate) School, Bermo dated 30-11-2007 indicating that Mrs Chitra Roy passed Higher Secondary Examination in 1964 from the school and that date of birth was not mentioned in the original certificate and cross list. The school has also enclosed copy of the original certificate of Mrs Chitra Roy but date of birth was not mentioned. Mrs Roy also submitted an affidavit signed by her on 23-6-2012 and certified by Sri B.R. Prasad, Notary, Hazaribag on the same day. According to the affidavit, Mrs Chitra Roy was about 69 years of age on the date of affidavit, which works out to year "1943" as date of birth. Mrs Roy also intimated that a theft was committed in her dwelling house on 24-5-1993 and the criminal (thief) had removed house hold valuable articles including original certificate granted by Principal, Sri Lakshmi Narayan Trust Mahila Mahavidyalaya.

During discussion with the Enquiry Committee, she said that all original documents relating to her date of birth has been stolen in 1993 (3rd June 1993). She also stated that she lodged an FIR in this connection in Sadar Thana, Hazaribag. However, she could not produce copy of the FIR despite sufficient time was allowed to her for submission of the documents to the Enquiry Committee. It was also noticed that date of theft mentioned by Mrs Roy during discussion with Enquiry Committee was different to that mentioned in the "affidavit". Similarly, age mentioned in the "affidavit" was also not correct.

Mrs Chitra Roy has passed B.A. II (Pass) from Ranchi University, SSLNT Women's College, Dhanbad. The Principal, SSLNT Mahila Mahavidyalaya, Dhanbad has supplied (19 June 2012) an attested photocopy of "Admission Register" for the Session 1965-67. According to the photo copy of the Register Mrs Chitra Roy was admitted in the College on 7-9-1965 and her date of birth is recorded as "8-1-48".

Recommendations:

The Committee examined the various documents and discussed the matter with

the Principal, KB Women's College, Hazaribag and Mrs Chitra Roy. Mrs Roy could not submit documentary evidence in support of her date of birth despite allowance of adequate time for the purpose. The only documentary evidence submitted by her in support of her date of birth i.e. photo copy of certificate dated 17-7-70 issued by the Principal, Sri Lakshmi Narayan Mahila Mahavidyalya, Dhanbad in which two digits indicating year of birth was, prima-facie, found to have been altered as already mentioned above. If, otherwise date of birth as mentioned in the certificate i.e. 8-1-53 is accepted, Mrs Chitra Roy passed her higher secondary (10+2) Examination in March 1964 at the age of only 11 (eleven) years. This is not acceptable to the Committee. On the other hand, date of birth as recorded in the Admission Register of SSLNT College is more authentic and acceptable to the Committee. Thus, the Committee recommends that date of birth of Mrs Chitra Roy may be considered and accepted as 8-1-48. The date of birth i.e. 8-1-53 as mentioned with tempering in the certificate attached in the Service Book of Mrs Chitra Roy is not acceptable.”

32. It further appears from the records of this case that an order dated 12.02.2014 was passed by respondent no. 2, whereby on the basis of the enquiry report (Annexure- G), the respondent no. 1 has treated the petitioner as superannuated with effect from 31.01.2010. Another letter dated 12.02.2014 was issued by the respondent no. 2 asking the petitioner to show-cause as to why the excess amount drawn by the petitioner from 01.02.2010 to 25.06.2012 be not recovered on the ground that the petitioner, on the basis of fake certificates of date of birth, has continued in service from 01.02.2010 to 25.06.2012 which was found contrary to the date of birth mentioned in the admission register of S.S.L.N.T. College, Dhanbad. The order dated 12.02.2014 and letter dated 12.02.2014, both have been challenged through I.A. No. 1623 of 2014 which was disposed of and prayer made in aforesaid interlocutory application is also under consideration in this writ petition.

33. This Court finds that although the petitioner has not been subjected to any regular departmental/disciplinary proceedings, but the undisputed fact on record is that the petitioner had studied in SSLNT College and upon verification made from the college, her date of birth was found to be recorded as 08.01.1948. However, the fact remains that the date of birth of the petitioner was recorded in her service book on the basis of certificate issued by SSLNT College mentioning that as per college register, her date of birth was found to be 08.01.1953. The said certificate was attested by the Accounts Officer of Ranchi University and the date of birth in the service book was recorded to have been verified by the principal of the college where the petitioner was teaching.

34. During the internal enquiry, it has not been recorded that the certificate produced by the petitioner was never issued by S.S.L.N.T. College nor the Accounts officer who had attested the certificate has been examined, nor the principal of the college who had verified the date of birth and recorded in the service book has been examined. It has not come to light as to under what

circumstances, the date of birth of the petitioner was found recorded as 08.01.1953 in the certificate produced by the petitioner whose attested photocopy was found on record. The petitioner has not produced the original certificate by stating that the same got stolen for which one First Information Report was also instituted, but a copy of the said First Information Report has not been produced.

35. The fact also remains that although a serious allegation of producing forged certificate was made against the petitioner while the petitioner was continuing in service, but neither any regular departmental proceeding was instituted against the petitioner nor any FIR was instituted. The petitioner was only issued a show-cause to give her explanation mentioning that as to why on the basis of allegations, she be not subjected to disciplinary Proceedings and FIR be instituted, to which she responded. Her explanation was rejected, but ultimately, neither any disciplinary proceedings was instituted nor any criminal case was instituted against the petitioner. The respondents never took any step to dismiss the petitioner rather the Vinoba Bhave University had ordered that the date of birth, as recommended by the committee i.e. 08.01.1948, be accepted as the date of birth of the petitioner and ordered that on having attained the age of 62 years on 08.01.2010, the petitioner will stand superannuated w.e.f. 31.01.2010.

36. This Court finds that in spite of making serious allegation of forgery and fraud, the petitioner was neither subjected to disciplinary proceedings nor any criminal case was lodged against the petitioner and therefore, the allegation of forgery and fraud was not proved against the petitioner through any disciplinary proceedings or through a criminal court. This court is of the considered view that on the basis of enquiry committee report, it cannot be said that the allegation of fraud and forgery stood proved against the petitioner particularly when it neither culminated into filing of any First Information Report nor culminated into any departmental proceeding. It is also important to note that even at the stage of internal enquiry, essential witnesses who were within the reach of the respondents, were not even called for to explain their role in the matter. The principal of S.S.L.N.T. College who is said to have issued the certificate, the Accounts officer of Ranchi University who is said to have attested the certificate and the Principal of the College itself who is said to have verified the date of birth of the petitioner, were not subjected to any examination at the stage of internal enquiry. In such cases of allegation of fraud and forgery, a regular departmental action as per rules is indispensable before taking the allegations as proved so that the employee also has due opportunity to vindicate his position and establish innocence.

37. However, it is not in dispute even from the side of the petitioner that ultimately from the records of SSLNT College, the date of birth of the petitioner was found to be 08.01.1948. In fact, the petitioner had also relied upon the certificate issued under the signature of the principal of SSLNT College on the basis of records of the college, however, as per the certificate the date of birth

was mentioned as 08.01.1953 which upon verification from the college records/register was found to be 08.01.1948. The petitioner has not disputed the actual entry made in the register of SSLNT College but at the same time, merely on the basis of report of internal committee, in which petitioner also participated, it cannot be concluded that the petitioner had forged the certificate to change her date of birth. The internal committee neither examined the Accounts Officer of the Ranchi University who had attested the certificate in the year 1985 nor examined the principal who had verified the date of birth of the petitioner and recorded in the service book. Merely because a certificate has a wrong entry which does not tally with the register of SSLNT College the same by itself is not enough to hold that the petitioner was guilty of forgery or fraud without there being any regular departmental enquiry or any criminal proceedings. However, the report of the internal committee sufficiently proved on the basis of the sole and undisputed source of information regarding date of birth of the petitioner i.e register of SSLNT College, that the date of birth of the petitioner was 08.01.1948 and not 08.01.1953 as recorded in the service book of the petitioner and also in the attested copy of the certificate produced by the petitioner.

38. The fact remains that as per the impugned order the petitioner has been made to superannuate with effect from 31.01.2010 and accordingly, the said date should be taken as the date of superannuation for all purposes. The findings of fraud and forgery recorded against the petitioner in the internal enquiry, having neither been decided against the petitioner through any regular departmental proceedings, nor through any criminal proceedings, cannot have any bearing on any claim of the petitioner while treating the age of superannuation of the petitioner with effect from 31.01.2010 and the consequences flowing therefrom.

39. The fact also remains that the respondents have done the required enquiry from SSLNT College much belatedly and at the fag end of the service of the petitioner. This Court is of the considered view that the respondents are not justified in proceeding further for recovery of the salary already received by the petitioner after 31.01.2010 considering the fact that the petitioner had worked beyond 31.01.2010. This is also because of the fact that the role of the petitioner in incorrect recording of date of birth in the certificate issued by the principal of SSLNT College was never established against the petitioner through regular departmental proceedings or through criminal case. However, since the date of superannuation of the petitioner is to be treated as 31.01.2010, the petitioner is not entitled for any direction from this Court for payment of any further amount on account of salary beyond 31.01.2010 but at the same time there will be no recovery of the amount already paid.

40. This writ petition is disposed of in the aforesaid terms.

41. Pending interlocutory application, if any, is closed.