

(2010) 09 PAT CK 0128
In the Patna High Court
Case No : C.W.J.C. No. 1101 of 2010

Doctor Shib Nandan Barnwal

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Citation : (2011) 1 JCR 235

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—Heard learned Counsel for the Petitioner, learned Counsel for the State and learned Counsel for the Bihar School Examination Board.

2. By communication dated 6.11.2006 (annexure-4), Petitioner, who was Additional Director, Health Services, was made to retire with effect from 31.7.2004 treating his date of birth as 6.7.1946, as reported to the Health Department by the Bihar School Examination Board. The Petitioner immediately protested and repeatedly protested thereafter, but no heed was paid. Ultimately towards the end of 2009. after three years, he was served with pension payment order treating his date of retirement as 31.7.2004 Petitioner, having no other option but to accept the same and challenge the action, came to this Court.

3. Counter-affidavit have been filed, both by the State and the Bihar School Examination Board, Rejoinders have also been filed.

4. With the consent of the parties, the writ petition is being disposed of at this stage itself.

5. It is not in dispute that the Petitioner joined Bihar Health Services as Civil Assistant Surgeon in the year 1971. His date of birth recorded in the service book and all other service related documents at the time of joining of service and

thereafter was 6.7.1947. This was on basis of the original Higher Secondary Certificate granted by the Bihar School Examination Board, copy of which is annexure-3/1 to the writ petition. He continued to serve the State without there being any dispute in this regard. If his date of birth, which is recorded in the service book is taken to be correct and final then he would retire on 31.7.2005 if the retirement age is to be 58 years, but with effect from 24.3.2005, the State extended the retirement ;age to 60 years and thus the Petitioner would, in normal course, retire on 31.7.2007. On 29.4.2005. the Petitioner was promoted and posted as Additional Director. Health Services, Government of Bihar and then without notice in this regard he was served the impugned letter dated 6.11.2006 retiring him with effect from 31.7.2004.

6. State in its counter affidavit, states that in the year 2004, a controversy was raised with regard to Petitioner's date of birth. It had sought verification from the Bihar School Examination Board. The Bihar School Examination Board, by its letter No. 3713, dated 5.1.2005, informed the Health Department that the date of birth of Petitioner is 6.7.1946 and not 6.7.1947, as recorded in Petitioner's service book. No" action was taken on basis thereof, rather to the contrary, as noted above, on 29.4.2005 Petitioner was promoted and posted as Additional Director, Health Services. It is further stated by the State that again by letter dated 10.3.2005, the School Examination Board was required to respond to which it had not responded and as such reminder was also sent to the Board on 5.10.2006. The reply was received from the Board on 13.10.2006, which stated that the date of birth was 6.7.1946 and accordingly the Petitioner was retired with effect from 31.7.2004 by impugned letter dated 6.11.2006.

7. The Bihar School Examination Board in its counter-affidavit states that it has no paper to verify the correctness of the date of birth except the tabulation register, which shows the date of birth as 6.7.1946. A copy of the tabulation register has been annexed, which, in fact, shows the date of birth as. 6.7.1946. As to the matriculation certificate, a bald statement is made that the matriculation certificate must be forged. Petitioner has produced the original certificate before this Court which to this Court do not appear to be either interpolated or forged. Petitioner is ready to submit the same for any examination. Petitioner states that right from the initial appointment, when the Petitioner came into service in the year 1971, there had been no controversy about Petitioner's date of birth, which was; 6.7.1947. Now, after more than 35 years of joining service this controversy has been unnecessarily created and that too without notice to the Petitioner the date of birth is being changed and the Petitioner retired retrospectively.

8. Having considered the matter, in my view, undisputed facts remain that firstly, for 35 long years Petitioner's date of birth remained 6.7.1947 without challenge from the anyone. Even though the alleged correct date of birth was known to the Department in January 2005 itself he was not retired, rather on 29.4.2005, he was promoted as Additional Director, Health Services. He was not made to

superannuate on 31.7.2004. Now all of a sudden, after more than a year, by the impugned order, dated 6.11.2006, he has been made to superannuate with effect from 31.7.2004 Le. retrospective date. In my view, Petitioner rightly submits that no such action could be unilaterally taken without notice to the Petitioner muchless an action at the fag end of his service. Petitioner, under normal circumstances, had a right to continue till 31.7.2007 because in the meantime the age of superannuation has been extended from 58 years to 60 years. In my view the Division Bench of this Court in the case of Awadh Narain Singh Vs. State of Bihar and Others, has held that even if the initial entry of date of birth was wrong, if that had continued for over 30 years, now at the end of the career, as in the present case, the date of birth should not be changed. That being the law laid down by the Division Bench in the case aforesaid, I am left with no option but to hold that the date of birth of the Petitioner, for the purpose of superannuation, would be the date, as disclosed in the service book, right in the beginning in 1971 at the time of initial entry into the service which remained unaltered till the year 2006 by the impugned order. Petitioner would be, thus, entitled to be superannuated with effect from 31.7.2007 and it is accordingly declared with all consequential benefits.

9. The writ petition is thus allowed.