
(1997) 04 PAT CK 0064

In the Patna High Court

Case No : C.W.J.C. No. 3286 of 1991 and M.J.C. No. 602 of 1990

Dr. Bhagwan Das

APPELLANT

Vs

The Vice-Chancellor, Magadh University and Others

RESPONDENT

Date of Decision : 23-04-1997

Acts Referred:

Bihar State Universities Act, 1976 — Section 67
Evidence Act, 1872 — Section 35

Citation : (1997) 1 PLJR 876

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Rameshwar Pd., Amrendra Kumar Sinha and Arun Kumar, for the Appellant; Harendra Prasad, for the Respondent

Judgement

A.K. Ganguly, J.—This writ petition was filed by the Petitioner for challenging the order dated 10th December, 1990 communicated to the Petitioner under the signature of the Acting Registrar, Magadh University, Bodh Gaya. There are also some more prayers relating to payment of salary and allowances etc.

2. The main dispute is over the date of birth of the Petitioner. The Petitioner's claim is that his date of birth should be 7th January, 1929 and the contention of the University is that 7th January, 1926 should be treated as the date of birth of the Petitioner. In support of his claim the Petitioner has relied upon an affidavit affirmed by his father, whereas, in support of the claim of the University they are relying on the age of the Petitioner as recorded in his matriculation certificate.

3. It is obvious that the aforesaid dispute is factual in nature, and for correct decision of the said dispute the validity of the claim raised by the Petitioner must be examined.

4. The litigation has been protracted one at the instance of the parties, in as much as, the matter has come before this Court previously also. Reference in this connection is made to the order dated 8th May, 1990 passed by the Division

Bench of this Court in a proceeding being numbered as C.W.J.C. No. 2429 of 1989. In the said order passed by a Division Bench of this Court, the learned Judges were of the view that alteration of the age in the service book of the Petitioner without affording an opportunity to the person affected is in breach of the principles of natural justice. In that context, the learned Judges of the Division Bench were pleased to hold that the Respondent University has the liberty to deal with the matter relating to the Petitioners' age after giving opportunity to the Petitioner as required in law. Their Lordships of the Division Bench were also pleased to hold that alteration of the age of the Petitioner was in breach of the principles of natural justice and therefore is void ab initio. The fact that prior to the filing of the writ petition the Petitioner has made a representation to the Chancellor and the same is pending, would not stand in the way of the Courts granting relief to the Petitioner as their Lordships were of the view that the impugned order of alteration of the age of the Petitioner is per se illegal.

5. Thereafter, a contempt proceeding was initiated which was numbered as M.J.C. No. 602 of 1990. Ultimately, the matter was heard in presence of the Petitioner in terms of the directions given by this Court in C.W.J.C. No. 2829 of 1989. The order passed by the Vice-Chancellor after hearing the Petitioner has been disclosed in the supplementary counter affidavit filed by the Respondent-University. The said order is dated 6th December, 1990. In the said counter affidavit it has been stated that the order dated 6th December, 1990 is the full text of the order and the summary thereof has been communicated to the Petitioner Vide Annexure-1. The said order dated 6th December, 1990 was placed before this Court and the Court has perused the same.

6. In the order it has been stated that the Petitioner was to retire on 31st January, 1986 as per statute which is applicable at the material time after reaching the age of 60 years in view of date of birth dated 7th January, 1926 recorded in the matriculation certificate.

7. From a perusal of the said order it appears that pursuant to the order of the Patna High Court dated 8th May, 1990 passed in C.W.J.C. No. 2429 of 1989 a show-cause notice was served upon the Petitioner asking him to explain why the date of birth of the Petitioner as recorded in the matriculation certificate as 7th January, 1926 should not be accepted Pursuant to that show-cause, the Petitioner filed a reply. In the said reply to the show-cause, the Petitioner also prayed for a personal hearing and wanted to file some documents to explain the matter. Thereafter, a date of personal hearing was fixed and on that date the Petitioner appeared. Apart from the Petitioner other persons namely, the Principal, Kishan College, Soh Sarai also appeared and were heard. Some officers also appeared on behalf of the Magadh University.

8. From a perusal of the order of the Vice-Chancellor, it appears that the matriculation certificate was issued by the Patna University and in the said certificate the date of birth of the Petitioner was recorded as 7th January, 1926

and the Petitioner never approached the Patna University to change the said date of birth on the basis of the affidavit sworn by his father. In the order of the Vice-Chancellor it has been also noted that the Petitioner in his application form for I.Sc. maintained the said date of birth as recorded in the matriculation certificate as 7th January 1926, and he also referred to the said date of birth in the application of B.Ss. which was filed in 1949 and also in the form of M.Sc. examination which was filed in the year, 1951. Therefore, it appears that the Petitioner has relied upon the said date of birth recorded in the matriculation certificate in all the examinations in his academic career.

9. In that context, the affidavit of Petitioner's father sworn before the Deputy Collector I/C, Gaya was examined. The said affidavit is dated 27th June, 1951. The said affidavit has three paragraphs which merely state that at the time of his first admission in School the Horoscope was misplaced, and the date of birth was wrongly recorded as 7th January, 1926 by guess, and the correct date of birth as it appears from the Horoscope prepared at the time of his birth is 7th January, 1929. In the said affidavit there is no explanation as to how the Horoscope which was allegedly misplaced at the time of admission of the Petitioner in the School could be recovered after a gap of so many years. There is no indication in the said affidavit from where the said Horoscope was recovered. There is no explanation in the said affidavit that in course of educational career the date of birth as mentioned in the matriculation certificate has been referred but why the same could not be corrected by making an application before the authorities of the University who issued the said certificate.

10. On a perusal of the said affidavit no man of ordinary prudence would be satisfied about the credibility of the said document. Therefore, this Court does not find any reason to differ with the conclusions arrived at in the order of the Vice-Chancellor that the date of birth of the Petitioner is 7th January, 1926 as recorded in the matriculation certificate.

11. Since on this question this Court is satisfied that there was no error in the order of the Vice-Chancellor and the order dated 6th December, 1990 has been passed on a correct basis, this Court need not go into any other question about the reliability of the service-book as mentioned in the order of the Vice-Chancellor. Nevertheless, this Court finds that the finding at that score is based on a correct appreciation of facts which cannot be interfered with by a writ Court. This Court is therefore of the view that 7th January, 1926 is the date of birth of the Petitioner. At the relevant point of time, i.e., in the year, 1986, as per Section 67 of the Bihar State Universities Act, the age of retirement of the Petitioner was 60 years, therefore this Court is of the view that the age of retirement of the Petitioner fell on 31st January, 1986.

12. The learned Counsel for the Petitioner referred to two decisions in support of his contention that the age recorded in Matriculation Certificate should not be accepted. One of them is a Division Bench judgment of Patna High Court in the case of S.K. Bhattacharya v. The State of Bihar and Ors. reported in 1970 PLJR

369 and the other one is of the Supreme Court in the case of Birad Mal Singhvi Vs. Anand Purohit, .

13. In S. Bhattacharaya (supra) the learned Judges of the Division Bench of Patna High Court did not refer to any principle or any precedent nor did they advert to the provisions of Section 35 of the Evidence Act in arriving at their decision. The said decision was given just on an analysis of the facts of the case. In the facts of that case as the age of the Petitioner was recorded in the Civil list and was accepted by the Bihar Government the same was preferred by the Court to the one recorded in the Matriculation Certificate by holding that the age recorded in the Matriculation Certificate may not always be conclusive. From this guarded observation of the Division Bench, it is clear that the decision in S.K. Bhattacharaya (supra) must be regarded as confined to the facts of that case and as not laying down any ratio.

14. But in a previous Division Bench judgment of Patna High Court in Vaidyanath Sahay Vs. Rambadan Singh and Another, , this question has been considered and decided with adequate reasons and by referring to previous decisions and principles in the following manner:

The matriculation certificate and the entries in the admission register of the Schools are important pieces of evidence, as they came into existence at a time long before the controversy. They are admissible u/s 35 of the Evidence Act; see the cases of Hrishikesh Banerjee and Others Vs. Sushil Chandra Moulik, and Bhim Mandal Vs. Magaram Corain and Others, .

This Court is in respectful agreement with the above ratio.

15. The Supreme Court in Birad Mal (supra) analysed the provisions of Section 35 of the Evidence Act in coming to the finding that in order to render a document admissible u/s 35 of the Act, three conditions are to be satisfied: (i) the entry must be in a public or official book (ii) it must be an entry stating a fact in issue and (iii) must be made by a public servant discharging official duty.

16. Here the matriculation certificate issued by the Patna University satisfies all above three conditions. Therefore, this Court holds on the ratio of Birad Mai (supra) that the age of the Petitioner as recorded in his matriculation certificate is admissible as a piece of evidence in the enquiry conducted by the Vice-Chancellor. This Court further holds that no reliable or credible material or evidence was produced by the Petitioner to controvert the same.

17. It appears that the Petitioner has continued in service up to January, 1989 and has been paid his salary up to the month of January, 1989. The same cannot be recorded since the Petitioner worked up to that period, but the retirement benefits or dues of the Petitioner cannot be calculated on that basis since this Court is of the view that the age of retirement of the Petitioner was 31st January, 1986, the retirement dues of the Petitioner must be calculated on that basis.

18. This Court therefore directs the Respondent-University to pay the retirement

dues of the Petitioner, if not already paid, on the basis of the Petitioner's age of retirement, i.e. on 31st January, (sic) and this Court holds that the Respondent cannot recover any amount which has been paid to the Petitioner as he worked up to January, 1989. The retirement benefits of the Petitioner may be paid within a period of two months from the date of receipt/communication of a copy of this order.

19. In view of the aforesaid order passed in this proceeding no further order need be passed in M.J.C. No. 602 of 1990. The said M.J.C. and the interlocutory application 680/97 are also disposed of in the above terms.

With the above observation/direction this writ petition is disposed of. There will be no order as to costs.