

(2012) 05 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6977 of 1998

Dr Smt. Ritambhari Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Patna University Act, 1976 — Section 35, 46, 47, 48, 56

Citation : (2012) 05 PAT CK 0005

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Sunil Kumar, with Mr. Madhuresh Prasad and Mr. Subodh Kumar, in CWJC No. 6977 of 1998 and Mr. Sunil Kumar, with Mr. Madhuresh Prasad and Mr. Subodh Kumar, Advocate, in CWJC No. 11135 of 1999, for the Appellant; Amaresh Kumar Sinha, AC to GA-5 For the State and Mr. Ajay Kumar Sinha, Advocate with Mr. Iqbal Ahmad, Advocate For Patna University, in CWJC No. 6977 of 1998 and Mr. Amaresh Kumar Sinha, AC to GA-5 For the State, Mr. Ajay Kumar Sinha, Advocate and Mr. Iqbal Ahmad, Advocate For Patna University in CWJC No. 11135 of 1999, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Jyoti Saran

1. Heard learned counsel for the parties. As the issue involved in each of the two writ petitions are same hence they have been taken up together for hearing and disposal.

2. Whereas the petitioner in C.W.J.C.No.6977 of 1998 has questioned the determination of the date of her birth by the State Government, the other writ petition bearing C.W.J.C. No. 11135 of 1999 questions the follow up order passed by the Patna University superannuating the petitioner in the light of the date of birth determined by the State Government which is the subject matter of C.W.J.C.No.6977 of 1998.

3. For the sake of convenience I shall be referring to the pleadings and the

annexures appended to C.W.J.C.No.6977 of 1998 unless clarified by specific reference to the other writ petition.

4. As already indicated above, the petitioner has questioned the order bearing Memo No.266 dated 01.08.1998 issued by the Deputy Secretary, Department of Secondary, Primary and Adult Education communicating the decision of the Department in altering the date of birth of the petitioner from 20.01.1941 to 28.12.1938 and having determined the date of birth as such, the writ petitioner was made to retrospectively superannuate with effect from 31.12.1996. The petitioner by filing C.W.J.C.No.11135 of 1999 has prayed for quashing of the notification dated 24.12.1998 issued under the signature of the Vice Chancellor, Patna University purporting to superannuate the petitioner with effect from 31.12.1998 in the light of the date of birth determined under the order dated 01.08.1998 of the Deputy Secretary, impugned in C.W.J.C.No.6977 of 1998.

5. The brief facts of the case necessary for disposal of the matter is that the petitioner was appointed as a Lecturer in History in the Patna University on 31.10.1960 with her date of birth recorded as 20.01.1941, which fact is manifest from the University Calendar present at Annexure 24 page 132. The name of the petitioner appears at serial No.41. For the purpose of permanent absorption the petitioner was subjected to undergo medical examination by the Medical Board under the directions of the Assistant Registrar contained in the letter dated 15.02.1965 placed at Annexure-23. The petitioner was confirmed against the post of Lecturer in History along with some others vide Notification dated 18/20th of April, 1966 (Annexure-4 to C.W.J.C.No.11135 of 1999). The petitioner was subsequently promoted on temporary basis to the post of Reader vide Notification dated 23/24th of November, 1974 placed at Annexure-5 of C.W.J.C.No.11135 of 1999 with effect from 01.03.1974. The name of the petitioner appears at serial No.4 of the said notification. Pursuant to an Advertisement No.26 of 1975 inviting applications for filling up the post of Principal, Government Women's College, Gulzarbagh, the petitioner responded to and was called for an interview by the Bihar Public Service Commission vide letter dated 2.8.1975 requiring the petitioner to be present for interview on 21.08.1975 (Annexure-5). The petitioner having been found suitable for appointment against the post of Principal, her name was recommended by the Bihar Public Service Commission as is evident from the letter of the Director (Administration)-cum-Deputy Secretary, Government of Bihar dated 27.3.1976 placed at Annexure-8. The date of birth of the petitioner has been mentioned as 20.01.1941 which is the same as recorded by the Patna University at the time of her appointment against the post of Lecturer on 31.10.1960. A formal Notification bearing No. 1559 dated 05.05.1976 was issued by the State Government under the signature of the Director(Administration)- cum-Deputy Secretary placed at Annexure-9 appointing the petitioner in the Bihar Education Service Grade-I against the post of Principal, Government Women's College, Gulzarbagh. The date of birth of the petitioner at page 2 of the said notification has been clearly mentioned as 20.01.1941. As the petitioner was a permanent

employee of the Patna University and continued to hold lien in the University, she was granted promotion on the post of Reader on substantive basis vide Notification dated 12.03.1984 placed at Annexure-8 of C.W.J.C.No.11135 of 1999, with effect from 01.04.1979 and by another Notification dated 23.05.1985 placed at Annexure-9 of C.W.J.C. No. 11135 of 1999, the petitioner along with some others was promoted to the post of Professor with effect from 17.02.1984.

6. Even while the records of the University as also the records of the State Government as referred to hereinabove, all along accepted the date of birth of the petitioner as 20.01.1941, the settled position was sought to be disturbed by the publication of the gradation list of the Bihar Education Service Cadre Grade-1, enclosed with letter dated 13.11.1995 of the Secretary Department of Secondary, Primary and Adult Education (Annexure-10). The name of the petitioner appears at Serial No.1 of the gradation list and her date of birth has been mentioned as 20.1.1944 in place of 20.01.1941. What seemed like an apparent typographical mistake, in fact was beginning of a long drawn proceedings against the petitioner. Vide letter dated 28.02.1996 of the Director(Administration)-cum-Deputy Secretary, Department of Secondary, Primary and Adult Education, the petitioner being charged with interpolation with her date of birth on the basis of unofficial information, was directed to produce her matriculation certificate in support of her date of birth. Even while the gradation list mentioned her date of birth as 20.01.1944 in place of 20.01.1941, the Director(Administration) mentions that due to lack information regarding her actual date of birth, the same could not be entered in the gradation list and thus directed the petitioner to produce her matriculation certificate for entering the same in the gradation list. The show cause notice is placed at Annexure-11. The petitioner responded to the show cause notice by response dated 19.03.1996 (Annexure-12). With reference to her appointment letter, the records maintained with the Bihar Public Service Commission, the Accountant General, Bihar, Patna, the Patna University and her Service Book, it was stated that her date of birth was clearly stated therein and that not only the date of birth recorded in the gradation list dated 13.11.1995 was incorrect, even the qualification of the petitioner was not rightly mentioned and which should be corrected.

7. The matriculation certificate of the petitioner, so directed to be produced by the Director (Administration), is placed at Annexure-1 of the application and simply mentions the year of passing of the petitioner from the Kadamkuan Girls School in April 1954, issued by the Bihar School Examination Board. It is contended that at relevant time the girl candidates were not required to mention their date of birth and it is for this reason that the date of birth column does not contain any entry.

8. Not being satisfied with the response given by the petitioner, the Director(Administration) by letter dated 21.09.1996(Annexure-13) determined the date of birth for the petitioner as 28.12.1938 on the basis of her passing of the matriculation examination in April, 1954. The Director(Administration)

holding as such also informed the petitioner that in view of the date of birth so determined, she would be superannuating from service with effect from 31.12.1996. The Director(Administration) has referred to some report received from the Principal of Rabindra Balika High School, Kadamkuan, Patna.

9. The order dated 21.09.1996 as contained in Annexure-19 was challenged by the petitioner through C.W.J.C.No.12198 of 1996 and which was allowed by order dated 20.12.1996 as contained in Annexure-21. The learned Single Judge of this Court upon examination of the rival contentions took judicial notice of the fact that no document had been brought on record by the respondents in support of the determination of the date of birth of the petitioner as 28.12.1938. In absence of any evidence supporting the charge and no opportunity having been given to the petitioner to contest the said evidence, the writ petition was allowed. The learned Single Judge while examining the matter also took notice of the fact that the respondents had relied upon the admission register of the Rabindra Balika High School, Kadamkuan, Patna for determining her date of birth. It was also noticed that the admission register though included the name of the petitioner as well as her elder sister but the age difference between the two sisters as recorded in the said register, was only 21 days.

10. The order passed by the learned Single Judge was challenged by the State by filing an Intra Court Appeal giving rise to L.P.A.No.88 of 1997 and which was dismissed by a Division Bench of this Court by the order passed on 20.03.1997 (Annexure-22). The Division Bench while dismissing the Appeal however did not restrain the respondents from passing a fresh order in accordance with law, after giving opportunity of hearing to the petitioner.

11. Purporting to act pursuant to the liberty granted by the Division Bench, the Secretary vide letter dated 5.9.1997(Annexure-16) having held a hearing on 11.08.1997 and having rejected the contention advanced by the learned counsel appearing for the petitioner, directed the petitioner to appear in person or through her counsel on 6.09.1997 i.e. the following day at 4 P.M. failing which it would be treated that she had nothing to submit. The letter of the Secretary by itself is a manifestation of his pre-determination of the issue and biased mind. While issuing a letter on 05.09.1997 and requiring the petitioner to appear on the following day i.e. 6.09.1997 under a threat that her non-appearance would be deemed as a refusal to participate, is a manifestation of close mind. A letter however, was written on behalf of the petitioner praying for adjournment of 15 days which was refused by the Deputy Director (Administration) vide letter dated 8.09.1997 (Annexure-17) requiring the petitioner to attend the hearing either in person or through her lawyer on 10.9.1997. In between the Secretary who initiated the proceedings Sri Chintu Nayak was transferred and was replaced by other persons and a proposal was forwarded for dropping the proceedings which was endorsed by the departmental Minister. However following difference of opinion within the department, the matter was again taken up and in the meanwhile Shri Chintu Nayak again assumed the post of Secretary, Department

of Secondary, Primary and Adult Education and who by the impugned order dated 01.08.1998 as contained in Annexure-20 while determining the date of birth of the petitioner on 28.12.1938, superannuated her with effect from 31.12.1996. Following the order as contained in Annexure-20 dated 1.08.1998 passed by the State Government, the petitioner gave her joining in the University on 19.11.1998 and which was accepted by the University. The University on its part mechanically accepted the order passed by the State Government and issued an order of superannuation of the petitioner dated 24.12.1998 as contained in Annexure-13 to C.W.J.C.No.11135 of 1999, superannuating the petitioner with effect from 31.12.1998 upon attaining the age of 60 years.

12. C.W.J.C.No.6977 of 1998 was admitted for hearing by order dated 24.03.1999. The learned Single Judge while admitting the writ petition was pleased to direct that the retiral dues of the petitioner would be paid to her treating her to be superannuated with effect from 31.12.1996 in the light of the order impugned and which would be subject to the result of the writ application. A further direction was issued to the authorities to take a final decision on the payment of salary of the petitioner, as admittedly she had worked until 01.08.1998.

13. C.W.J.C.No.11135 of 1999 was admitted for hearing by order dated 11.11.2004, to be heard along with C.W.J.C.No.6977 of 1998.

14. The petitioner has admitted in her pleadings made in paragraph 30 of C.W.J.C.No.8243 of 2000, filed by the petitioner for payment of her retiral benefits and other dues and which earlier was being heard analogous with these writ petitions, that though the petitioner had worked under the State Government until 31.07.1998 she has received salary only until June 1998 and has not received the salary for July 1998. This Court considering the distinct nature of reliefs prayed in the respective writ petitions which were being heard analogous, decided to segregate the hearing and whereafter these two matters raising primarily issue of determination of date of birth were heard separately.

15. Learned Senior Counsel appearing for the petitioner submitted that the order impugned is in fact based on no evidence. It was stated that even where the University in its counter affidavit filed in C.W.J.C.No.6977 of 1998 more particularly, in paragraphs 7 and 8 thereof has admitted that the date of birth of the petitioner as recorded in the University record is 20.01.1941 and that there is no other record in the University apart thereof and the same stand has been taken in paragraph 7 of the counter affidavit filed in C.W.J.C.No.11135 of 1999, the respondent-Secretary, solely relying upon the photocopy of the admission register of the Rabindra Balika High School, Kadamkuan, Patna, the original whereof could never be traced, as admitted by the State in paragraph 24 of the supplementary counter affidavit filed on 4.5.2010 in C.W.J.C.No.6977 of 1998 and treating the petitioner to be aged 16 years on the date of her passing of the matriculation in April, 1954, proceeded to determine her date of birth as 28.12.1938 and thereafter superannuating her with effect from 31.12.1996 upon

attaining the age of 58 years. It is submitted that at the relevant time when the petitioner passed the matriculation examination in April 1954, there was no restriction as to the age in appearing at the matriculation examination. It was submitted that apart from the photocopy of the admission register of Rabindra Balika High School, Kadamkuan, Patna and some letter of the Secretary, Bihar School Examination Board, which formed the basis for passing of the order dated 21.09.1996 (Annexure-13) which was set aside vide order contained in Annexure-21 and affirmed by the Division Bench vide order as contained in Annexure-22, there is no other material on record to doubt the date of birth recorded by the University and the other authorities including the Accountant General. It is stated that the earlier order as contained in Annexure-13 having been set aside by this Court, the liberty granted by the Division Bench to proceed a fresh was not followed by the respondent Secretary rather by the impugned order, he has merely reiterated his opinion as evinced in the earlier order dated 21.09.1996 (Annexure-13). The documents so relied upon neither were handed over to the petitioner nor the original copies thereof were ever produced during the course of the proceedings before the Secretary. It was thus submitted that the impugned order as contained in Annexure-20 issued in purported compliance and obedience of the directions of the Division Bench as contained in Annexure-22, is in fact a mere reiteration of his earlier views and is based on conjectures and surmises in absence of any evidence supporting the same. It was submitted that an unnecessary and unwarranted ghost had been created by the respondent authorities without divulging the source thereof. It is stated that the University also while passing the order dated 24.12.1998 impugned at Annexure-13 of C.W.J.C.No.11135 of 1999 has merely acted in furtherance of the order dated 01.08.1998 impugned at Annexure-20 of C.W.J.C.No.6977 of 1998 and has mechanically issued orders of superannuation of the petitioner upon attaining the age of 60 years with effect from 31.12.1998.

16. Summarizing his arguments learned counsel submitted as follows:-

(1) The petitioner being a permanent employee of the University and the University never having questioned her date of birth, the State Government had acted wholly without jurisdiction in holding proceedings for determination of the date of birth of the petitioner even in absence of any such request being made by her parent employer or any complaint being received in this regard.

(2) The admission register of the Rabindra Balika High School and the report of the Secretary, Bihar School Examination Board which formed the basis of order dated 21.9.1996 whereby the date of birth of the petitioner had been determined as 21.12.1938 not being upheld by this Court could not have formed the basis for passing of the order dated 01.08.1998 impugned at Annexure-20 of C.W.J.C. No. 6977 of 1998 by the Secretary of the Department as it would amount to overreaching the view expressed by this Court.

(3) The impugned order issued in purported compliance of liberty and the directions in the order of the Division Bench placed at Annexure 22 of the writ

petition, suffers from the same infirmity as the earlier order dated 21.09.1996, since the principles of natural justice stood violated by non handing over of the documents and non production of the original records during the course of inquiry, as also admitted by the respondents in their supplementary counter affidavit.

(4) Despite the order passed on 26.09.2008 recorded in C.W.J.C. No. 8243 of 2000 requiring the respondents to produce the original register, the same has not been produced and its non-availability has been admitted in the supplementary counter affidavit filed on 4.05.2010 in C.W.J.C.No.6977 of 1998.

(5) Although initially a hearing was conducted by the author of the impugned order dated 1.8.1998 Shri Chintu Nayak but before passing the final order he was transferred and was replaced by other Secretaries, only to reassume the post of Secretary, Secondary, Primary and Adult Education once again and after the reassumption of the post, the Secretary did not choose to proceed afresh or conduct any further hearing in the matter rather proceeded to pass the order on the basis of the earlier hearing conducted by him.

(6) The determination of the date of birth is imaginary and based on no evidence.

17. Mr. Amresh Kumar Sinha, learned A.C. to G.A.5 while responding on behalf of the State submitted that mentioning of the date of birth as 20.01.1944 in the gradation list as contained in Annexure-10 was a mere typographical error and ought to have read as 20.01.1941. It was submitted that the determination of the date of birth was only a confirmation of fact and the petitioner having participated in the enquiry cannot question the same on the issue of jurisdiction.

18. Learned counsel in support of his submission has relied upon the judgments of the Supreme Court since reported in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, . Mr. Sinha, learned counsel for the State even while admitting the contest of the petitioner that the order impugned was passed by Sri Chintu Nayak on reassumption of the post of Secretary without holding any further proceedings, submitted that since Sri Nayak had already conducted the hearing earlier and had heard the petitioner hence upon reassumption of the post it did not require any fresh hearing and the order was passed in terms of the hearing conducted by him before his transfer. It was sought to be canvassed that no prejudice was caused to the petitioner as such. Responding to non handing over of the copies of the documents, it was submitted that since the copies of the documents were on record of the proceedings, no prejudice was caused in non handing of the copies of the same. Learned counsel, however, admitted that neither the original copy of the admission register nor the report of the Secretary, Bihar School Examination Board which formed the basis of the order impugned, were led in evidence during the course of proceedings meaning thereby the petitioner never had an occasion to challenge the veracity thereof. Learned counsel, however, concluding his arguments submitted that the

determination of the date of birth of the petitioner as 28.12.1938 in the light of her passing of the matriculation in April 1954 was not unreasonable nor perverse requiring interference by this Court.

19. Mr. Ajay Kumar Sinha, learned counsel for the University while admitting that the order impugned in C.W.J.C. No. 11135 of 1999 was a follow up to the order impugned in C.W.J.C.No.6977 of 1998 defended the action of the University by taking recourse to the provisions underlying Sections 46, 47 and 48 of the Patna University Act, 1976 stating that the State Government being the funding agency, the University could not question its decision. With reference to Section 35 of the said Act it was stated that no post can be created by the University without obtaining sanction of the State Government and that the accounts of the University being audited by the State, it could not have continued the petitioner in the services despite the decision on her date of birth by the State Government. It was submitted that the petitioner never questioned the jurisdiction of the State Government in initiating the proceedings and cannot raise the same at this stage. While referring to paragraphs 7 and 8 of the counter affidavit filed in C.W.J.C. No. 6977 of 1998 and the counter affidavit filed in C.W.J.C. No. 11135 of 1999 it was admitted that apart from the date of birth recorded in the University records as 20.1.1941 of the petitioner there were no other records contradicting the same. With reference to Section 56 of the Act it was stated that the disciplinary authority/appointing authority of a Professor is the Vice Chancellor with the approval of the syndicate of the University.

20. Mr. Sunil Kumar, learned Senior counsel appearing on behalf of the petitioner in response to the averments made by the learned counsel for the respondent authorities of the State Government and the University, submitted that the very fact that an issue of date of birth was sought to be raised after 35 years of service of the petitioner, even in absence of any doubts raised or complaints received in this regard or even if received not brought on the record of the proceedings, the entire proceedings is a manifestation of imaginary thoughts and perceptions and an abuse of the executive powers. It was submitted that the liberty afforded by the Division Bench to the respondent authorities to pass a fresh order in accordance with law, it required application of mind and availability of materials to arrive at a conclusion determining the date of birth but the respondent Secretary while passing the order has merely relied on the same materials to reach the same conclusion which was negated by this Court. He thus submitted that the orders impugned cannot be sustained and are fit to be quashed and set aside and this application is fit to be allowed.

21. I have heard learned counsel for the parties and have perused the materials on record. It is not in dispute that the petitioner maintained her lien with the Patna University and her lien was never terminated by the University. Thus the University was her parent employer. It is also not in dispute that the services of the petitioner under the State Government in its Bihar Education Service Cadre Grade-1 was never confirmed. It is also not in dispute that no recommendation

was made by the University requiring the State Government to undertake any exercise determining her date of birth or any permission was obtained to conduct the proceedings. Considering the circumstances, this Court is prima-facie of the opinion that the entire exercise by the State Government in its department of Secondary, Primary and Adult Education, in holding the proceedings effecting the service condition of the petitioner, even when her lien was maintained with the Patna University, was an assumption of the jurisdiction which lawfully did not vest in them. The petitioner having passed her matriculation examination in April, 1954 and having secured a permanent appointment with the Patna University on 31.10.1960 against the post of Lecturer in History with her date of birth being recorded as 20.01.1941, the University never doubted the same nor ever questioned the veracity of the information given by the petitioner as recorded in her Service Book. Even the Accountant General has not disputed the position. The records of the proceedings manifests that the date of birth i.e. 20.1.1941 as given by the petitioner remained unquestioned by any of the authorities until the publication of the gradation list dated 13.11.1995 as contained in Annexure-10. The University has admitted that the Service Book of the petitioner and the records maintained in the University mentions her date of birth as 20.01.1941. The recommendation of the Bihar Public Service Commission as referred to in the letter of the Director (Administration) dated 27.03.1976 placed at Annexure-8 as well as the notification dated 5.5.1976 placed at Annexure-9 both mentions the date of birth of the petitioner as 20.01.1941. The genesis of the rigours to which the petitioner has been subjected, i.e. a letter dated 28.02.1996 of the Director (Administration) charging the petitioner of interpolating her date of birth, is on the basis of some unofficial communication and in absence of any documents supporting the allegation. It is apparent that there is complete absence of materials to form basis of any departmental proceedings. Nonetheless, the petitioner having responded to the notice, her contentions were rejected under the order dated 21.09.1996 (Annexure-13) which was set aside by a learned Single Judge of this Court vide order dated 20.12.1996 placed at Annexure 21 and affirmed by the Division Bench in the appeal preferred by the State placed at Annexure-22. The liberty afforded by the Division Bench has been misinterpreted by the Secretary of the Department in reiterating the same position which had been rejected by this Court. The order impugned at Annexure-20 is a mere reiteration of the earlier order with no further evidence apart from the documents which were subject matter of the earlier round of the proceedings. It is more than apparent that the Secretary has passed the order impugned on the basis of the same materials. The infirmity does not end at that. The materials so relied upon were neither handed over to the petitioner nor the original records produced during the course of proceedings. It does not require much examination to hold that the Secretary did not bother to examine the earlier orders of this Court passed in the earlier round of litigations. That the original records of the documents relied upon by the Secretary were never available with the respondents, is manifest from their acceptance in the supplementary counter affidavit filed in C.W.J.C. No. 6977

of 1998. The University has mechanically proceeded in the light of the order impugned passed by the State Government dated 1.8.1998, merely reflects the apathy prevalent and the manner in which service rights are being determined in departmental proceedings.

22. Summarizing the views in the light of the materials available on the record of the proceedings all that this Court would say is that the petitioner has been subjected to undue harassment at the hands of the State, with the University playing a mute spectator. Even if the State had chosen to superannuate the petitioner on the basis of the date of birth determined by them, in absence of any questions being raised by the University as regarding the entries made in their records, there was no reason for the University to simply play follow the leader, with no application of mind. That the State Government is a funding agency hardly can be a ground for the University to accept the decision of the State Government, blindly specially when it does not find support from their own records nor the University at any stage questioned the date of birth of the petitioner. The matriculation Certificate placed at Annexure-1 indeed does not mention any date of birth. The said certificate having been produced by the petitioner at the time of her appointment under the University, the date of birth divulged by her and recorded by the University, was never doubted. A period of 35 years having passed, with the petitioner being promoted to the post of Professor of the University way back in 1984 and holding a Grade-1 post in the Bihar Education Service cadre, the very initiation of the proceedings by the State Government was most unwarranted in absence of any document controverting the same or any complaint in that regard. The veracity of the documents relied upon by the Secretary having been rejected by this Court in earlier round of litigation and with no further evidence coming in support of the charges, the order impugned in the two writ petitions merely appear to be personal satisfaction of an executive ego. Despite the fact that the original of the documents relied upon, were never led during the course of so called proceedings, yet the Secretary proceeded to uphold his views evincing his predetermined views on the issue. The orders impugned are a manifestation of arbitrariness, biased mind and abuse of executive powers.

23. A somewhat similar situation had come up for consideration before the Supreme Court in a case reported in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . In the said case four different date of births had been recorded in the case of the said respondent at different stages of her academic career i.e. the school admission register, the college register, the medical college register and the date of birth recorded at the time of joining service. On the basis of some enquiry the date of birth recorded in the 1st year college was determined as the date of birth on the basis of some report received by the authority which was never disclosed to the respondent. The Supreme Court while dismissing the State's appeal observed as follows:-

(12) It is true that some preliminary enquiry was made by Dr. S.Mitra. But the

report of the Enquiry Officer was never disclosed to the 1st respondent. Thereafter the 1st respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that order is administrative in character but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice and after informing the 1st respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the 1st respondent of being heard and explaining the evidence. No such step were admittedly taken, the High Court was, in our judgment right in setting aside the order the State.

24. In the case in hand also although a perfunctory enquiry has been made and an order passed relying upon some school admission register and report of the Secretary, Bihar School Examination Board but neither the documents were handed over to the petitioner nor the originals thereof ever produced during the course of the departmental proceedings.

25. It is by now well settled that suspicion or presumption cannot take place of proof even in domestic enquiries. It is equally well settled that fairness in procedure in a domestic enquiry should reflect from the enquiry report and the order passed thereon. I would not hesitate to hold that not only the proceedings was most unwarranted rather it has been held with a premeditated mind. A determination of service rights especially where the order results in superannuation of the delinquent, cannot be on mere hypothesis and personal satisfaction of the authority concerned in absence of evidence supporting the same. No rule or circular has been referred to by the respondent Secretary which were in force in the year 1954 prescribing any age limit for the examinees for appearing in a matriculation examination. The date of birth of the petitioner as recorded by the University and other records, never put to question rather having been accepted for over 35 years, the determination of her date of birth by the impugned order as 28.12.1938 simply on the basis of the date of passing of the matriculation examination by the petitioner in 1954, is a mere ipse dixit of the respondent Secretary in absence of definite evidence contradicting the stand of the petitioner.

26. For the reasons aforesaid the orders impugned in the writ petitions cannot be sustained and are accordingly quashed. The petitioner shall be deemed to be in service according to the date of birth recorded in the University records i.e. 20.01.1941 and shall be deemed to have superannuated from the University on attaining the age of 60 years, as per University statutes, i.e. w.e.f 20.01.2001 and shall be entitled to salary from the University for the period w.e.f. November, 1998 when the petitioner joined the services of the University, until her superannuation in January 2001. Until October 1998, the petitioner shall be deemed to be under the services of the State Government and shall be entitled

for the salary for the period until 31st of October, 1998. As admittedly, the petitioner has been paid her salary until June 1998, the State Government in its Department of Secondary, Primary and Adult Education would be under an obligation to make payment of the salary of the petitioner for the period on 1.07.1998 until 31.10.1998.

27. The pension received by the petitioner from the State Government/University for the period aforesaid, if any, would stand adjusted against the salary found payable.

28. The authorities concerned of the State Government and the University shall calculate the dues of the petitioner and make payment thereof within a period of 3 months of receipt/production of a copy of this order. The writ petitions stand allowed. However, in the circumstances, there shall be no order as to costs.