

(2009) 07 JH CK 0106
In the Jharkhand High Court

Dukhni Devi

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0106

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. The petitioner in this writ petition has prayed for issuance of a direction to the respondents to send the petitioner to the Medical Board for ascertaining her age in view of the fact that at the time of her appointment, affidavit filed by the petitioner in respect of her age was not considered, nor recorded in her service book when the service book was opened. Further prayer has been made for quashing the letter No. 1748 dated 1.8.2004 issued under the signature of the General Manager cum Chief Engineer Transmission, Ranchi, whereby the petitioner has been intimated that she would retire from service with effect from 28.2.2005.

3. The case of the petitioner, in brief, is that she was granted compassionate appointment on regular basis against permanent vacancy after the death of her husband on 23.11.1994. At the time of submission of her application for compassionate appointment, she had submitted a medical certificate issued by the Medical Officer wherein it was confirmed that the age of the petitioner on the date, in the year 1992, was 31 years. The petitioner was all along under the impression that her age mentioned in the affidavit was duly entered in the service book and the same was accordingly maintained. However, to her utter surprise, she was informed through the impugned letter of the General Manager-cum-Chief Engineer that she would retire from service on 28.2.2005. The

petitioner then promptly filed her representation before the concerned authority of the respondents praying for correction of the date of birth by sending her for medical examination for the purpose of ascertaining her age. It was in response to the third reminder that the petitioner was informed that her prayer for referring her to medical Board for examination was refused. Being aggrieved, the petitioner filed this writ petition in the year 2005.

4. Sri A.K. Mishra, learned counsel for the petitioner while assailing the impugned letter, submits that as per the rules of procedure of the respondents in the matter of maintaining and opening service book of the employees, the service book is required to be opened on the date of appointment granted to the employees. Entries contained in the first page including the date of birth should be recorded in presence of the employee concerned and a Xerox copy of the 1st page has to be supplied to the employee. This procedure, according to the petitioner, was not followed in the case of the petitioner which has been admitted even by the respondents in their counter affidavit.

Referring to the relevant paragraphs of the counter affidavit of the respondents, learned Counsel would point out that on the date of appointment, admittedly, no service book was opened. It was opened almost one year after her appointment and even then, while all other columns were filled up, the column relating to date of birth was intentionally left out. The date of birth column was subsequently filled up arbitrarily without informing the petitioner and without recording the correct age of the petitioner. Learned Counsel argues that the contention of the respondents that the affidavit filed by petitioner in respect of claim of her age was not acceptable on the ground that there was contradiction in each of the affidavits regarding the age, is misconceived and misleading, firstly because in all the three affidavits sworn by her, and which were admittedly submitted by the petitioner, there is consistency as far as the petitioner's age is concerned. Secondly, even according to the rule of procedure relating to the recording of age of an employee, the rule stipulates that the affidavit sworn by the employee would be acceptable. In the petitioner's case, it has not been followed.

Referring to annexure E filed by the respondents, learned Counsel submits that no reliance can be placed on this document in view of the fact that entries therein were not made by the petitioner herself, since she is admittedly an illiterate lady and the document (Annexure E), which declares her age, contains her thumb impression. Learned Counsel concedes however that this writ petition was filed in February 2005 but since the matter could not be taken all along for hearing, no fruitful purpose would be served now by sending the petitioner for the medical examination of her age. Yet, the respondents could be directed to accept her age as declared by the petitioner in her affidavit which she had admittedly submitted before the concerned authority of the respondents in the year 1992, and to allow her all consequential benefits.

5. Per contra, Mrs. I. Sen Choudhury, learned Counsel for the respondents, would vehemently deny and dispute the entire claim of the petitioner. While

acknowledging the fact that the petitioner's service book was not opened at the time of her appointment, and was opened one year later and also acknowledging the fact that the column relating to the date of birth was not filled up at the time when other columns were filled up and that the date of birth was filled up subsequently, learned Counsel explains that though it may be an aberration as far as the procedure is concerned, but merely because the date of birth was filled up subsequently, it does not lead to any conclusive inference that any manipulation was done in the service book of the petitioner particularly relating to the entries of her date of birth. Learned Counsel would further explain that as per her information, since at the time the petitioner was appointed, it was under the Bihar State Electricity Board, some discrepancy might have occurred which could not be explained in the instructions received. Learned Counsel would however point out that notwithstanding the above lapses, the petitioner had knowledge all along about the entries of her date of birth in her service book. Referring to annexure E of the counter affidavit, learned Counsel would explain that this is the nomination form duly submitted by the petitioner wherein the date of birth as recorded in service book has been stated along with all other particulars regarding the name and identity and other particulars of the members of her family. This document was submitted by the petitioner in the year 1988 and even at that time she had not filed any objection to the entry relating to her age or the date of birth, nor did she promptly seek for correction of the entries. The petitioner has admittedly not raised any objection either in 1988 or at any time subsequently. It is only after receipt of the impugned notice of her retirement that she has filed this writ petition which apparently, is at the lag end of her service, i.e. two days before retirement. Learned Counsel submits that it is well settled by a catena of decisions of this Court and the Supreme Court that any rectification in respect of date of birth of an employee cannot be made, if such prayer is made at the fag end of service of the employee.

6. Learned Counsel adds further that the petitioner's prayer for referring her to the medical board for ascertaining her age was twice refused by the concerned authority, the last being on 31.12.2004, and such decision of the respondent despite communication, has not been challenged by the petitioner even in this writ petition.

7. Learned Counsel for the petitioner explains at this juncture that the decision on the petitioner's representation cannot be treated as rejection of the prayer since the petitioner's prayer for sending her to medical board was refused on the basis that there was no dispute in respect of age or date of birth of the petitioner.

8. Be that as it may, from the rival submissions, the undisputed facts which emerge are that at the time of petitioner's appointment, no service book was opened. It was opened one year later and at that time also, the column regarding the date of birth was left blank. It was filled up at a later stage and at the time, admittedly the petitioner was not called upon to furnish proof in respect of her age. The entry in the service book concerning the age of the petitioner is

claimed to have been made on the basis of the service records of her deceased husband, his age and the petitioner's age on the death of the deceased husband.

However, It does appear from the annexures and the submissions made by the learned Counsel for the respondents that the entries regarding the date of birth as made in the service book, was within the petitioner's knowledge and this fact has been confirmed by annexure E (nomination form) submitted by the petitioner. The entries against various columns in the nomination form confirm that the date of birth/age/year of the petitioner was mentioned as 1945 which corresponds to the entry made in the service book. The contention of the learned Counsel for the petitioner that since the petitioner is an illiterate lady, entries in the nomination form cannot be said to have been made by the petitioner herself, does not appeal to reason. Even if the lady is illiterate and the form bears her LTI to suggest that she is an illiterate lady, yet it has to be deemed that the entries made in the document or the information contained therein were recorded at her instance.

9. Apparently, in spite of her acknowledgement of the entries with regard to her date of birth, age or year, in the service book in 1988, the petitioner did not challenge the same, nor did she seek correction or rectification of the entries. Having allowed the entries regarding her date of birth to continue in her service record all along, the petitioner cannot possibly raise any dispute at the fag end of her service and that too, after receiving the impugned notice.

In the light of the above facts and circumstances. I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed at the stage of admission.