
(2020) 01 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (S) No.5402 of 2019

General Manager, East Central Railway And Ors

APPELLANT

Vs

Bhikhari Prasad Mahto

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 JH CK 0042

Hon'ble Judges : Aparesh Kumar Singh, J;Kailash Prasad Deo, J

Bench : Divison Bench

Advocate : Md. Jalisur Rahman

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioners-Railways. Petitioners-Railways are aggrieved by the impugned decision dated 12th April 2019 rendered in O.A. No.051/00195/2017 of the learned Central Administrative Tribunal, Patna Bench (Circuit sitting at Ranchi) as the learned Tribunal while directing the respondent-Railways to fix the pension of the applicant employee deeming him to retire w.e.f. 31st May 2010, did not approve of the decision of the Railways to recover salary and other benefits paid to the employee during the period 31st May 2010 to 31st May 2012 i.e. beyond his actual date of retirement.

The Tribunal after consideration of the case of the parties held as under :-

"4. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The applicant's argument is that he has served the Railway Department for close to 40 years and during all this period his date of birth has been shown as 10.05.1952. Changing this date of birth after his retirement on the basis of any suspicion of overwriting is absolutely unjust. The applicant claims to be unaware of what was mentioned in the original transfer certificate as it was in possession of the respondent authorities. The learned counsel for the applicant also cited cases of (i) Ram Kishun Mahto Vs. J.S.E.B.;

SCR 2003(2) page 400, (ii) Arjun Prasad Yadav Vs. State; SCR 2003(4), (iii) Ram Prasun Singh Vs. State of Jharkhand; JCR 2005(4) and (iv) JCR 2006(4) page 147 in support of his claim about the illegality involved in not paying him salary for the period for which he is alleged to have remained in service after the date of his superannuation. The learned counsel for the respondents argued in favour of such deduction (for the period of alleged overstay) on the basis of the decision in Radha Kishun (supra) and the Railway Board's instructions contained in 288/1987 and 139/1999 (Annexure-R/2). We have gone through these rules and also the decisions cited by both the parties. It is true that the Hon'ble Apex Court has found justification in deducting a person's salary when it was not in dispute that the person was aware (or should have been aware) of his date of birth and thus was a party to the wrongful continuance in office against the rules of service. In the present case, there is no conclusive evidence of the applicant's collusion in the wrongful act. The applicant was appointed almost four decades earlier to a low unskilled job. The Department has discovered, two years after his retirement, about his date of birth not being what was mentioned in the service records. In this situation, there cannot be a definite conclusion about applicant's complicity, in hiding or mis-stating, his actual date of birth, and he deserved to be given the benefit of doubt. The deduction of pay for the period for which the Department actually used his services will, therefore, be wrong. Since the Department has now clearly found that his date of birth was 10.05.1950 (and not 10.05.1952) and since the applicant has not been able to produce anything to controvert it, it will also not be correct to give him the advantage of retirement benefits that would accrue to him if there was no mistake in recording his date of birth. We feel that interest of justice will be served if a via media is adopted. We direct the respondents to fix his pension deeming him retired on 31.05.2010 while not deducting anything for whatever was paid to him by way of salary and other benefits during the period of his alleged overstay till 31.05.2012. The revised orders to this effect should be issued and consequential benefits released to the applicant within 3 months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs."

Learned counsel for the Railways submits that the wrong entry in the date of birth of the employee in the service book i.e. 10th May 1952 was discovered after his retirement on verification from the concerned Azad Hind High School, Gomoh. Such entry was made on the basis of a transfer certificate produced by the employee at the time of entry in service which also appeared to be interpolated by making the entry '10th May 1950' as '10th May 1952'. After approval of the competent authority and in terms of the Railway Board circular nos.288/1987 and 139/1999 a decision was taken to recover the excess salary and allowances paid to the applicant beyond his correct date of retirement. The impugned decision is against the circular of the Railways and also the decision of the Apex Court in the case of Radha Kishun Vs. Union of India & Ors., also taken note by the learned Tribunal on being cited by the Railways.

Upon hearing learned counsel for the Railways, direction was issued to produce

the relevant service records of the respondent employee. Learned counsel for the Railways has produced the same and in particular highlighted the entry in the date of birth made in the first page of his service book which was based upon a transfer certificate produced by the employee of Azad Hind High School, Gomoh, Dhanbad dated 18.04.1980. He submits that this transfer certificate also contained an incorrect date of birth i.e. 10th May 1952 which got revealed during inquiry after the retirement of the petitioner vide Annexure-2, letter dated 17th May 2014 issued by the Principal of the school. Applicant being the sole beneficiary of the incorrect entry, was liable for the same. It is further submitted by the learned counsel for the Railways that the applicant had indulged in misrepresentation. Therefore, the impugned decision deserves to be reversed.

We have considered the submissions of the learned counsel for the writ petitioner and the relevant material facts on record placed before us.

In the first place it is not disputed by the petitioner Railways that no proceedings were initiated against the applicant employee to come to a finding of misrepresentation or collusion. On the basis of letter of the Principal of Azad Hind High School, Gomoh at Annexure-2 bearing letter dated 17th May 2014 the Railways took a decision to recover the amount paid in excess as salary and allowances to the applicant beyond his correct date of retirement i.e. 10th May 2010. A finding of collusion, fraud or misrepresentation causing adverse consequences should have been drawn only after a proper inquiry giving opportunity to the employee to make out his defence. Perusal of the letter of the Principal, Azad Hind High School, Gomoh (Annexure-2) also indicates few gaps / lacunae as at sub-para no.5 it says that the records relating to the date of leaving the school of the applicant was not available. At sub-para no.6 it is indicated that he was admitted in 8th class but later records are not available, whereas the transfer certificate enclosed to the service book shows that the employee left the school on 31st March 1968 when he was reading in Class-XI Special and that he had failed in the annual exams in the year 1968. This inquiry made by the Railways is apparently after 32 years of the date of issue of transfer certificate i.e. 18th April 1980 in the year 2014 i.e. after two years of his retirement on 10th May 2012. The entries made in the service book were counter-signed on several occasions by several controlling and higher authorities of the employee. It further shows that the employee was absorbed against regular vacancy and transferred in 1983. Subsequent entries such as 4th July 2002 at page-26 shows that he was found suitable for the post of JE-1 in a particular scale. Pay fixations have been done from time to time as per the promotions granted and pay revisions implemented in the organization. It further appears that entries in his service book are consistent over a period of time and there had been no occasion to doubt it by the employer.

In these circumstances, considering the fact that the applicant had entered into service in 1973 on the post of a casual waterman and that service records lie in the custody of the controlling officer of such menial staff, the learned Tribunal

took a considerate view of the matter on equitable grounds to refuse deduction of the salary and other benefits paid to the employee for his period of alleged overstay beyond 31st May 2010 till 31st May 2012, though the Tribunal thought it proper to direct fixation of his pension deeming him retired w.e.f. 31st May 2010.

Having considered the facts and circumstances noted herein above and the just an equitable approach adopted by the learned Central Administrative Tribunal, we are of the view that the impugned decision does not suffer from any such illegality which deserves to be interfered under Article 226 of the Constitution of India by this Court. Accordingly, writ petition is dismissed. The service book is returned to the learned counsel for the Railways.