
(2008) 02 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 3475 of 2002

Kapileshwar Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Citation : (2008) 3 PLJR 523

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Ajay Kumar Thakur, Md. Imteyaz Ahmad, Mukesh Kumar, Dhudh Nath Singh and Amir Alam, for the Appellant; Anjani Kumar Sharan and Sujeet Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioner and learned counsel for the State. Petitioner has filed this petition for quashing order of termination of service of the petitioner vide letter dated 29.8.2001 (Annexure-1) issued by the Director, Labour Employment and Training, Bihar, Patna with retrospective effect since 31.5.1995 which was said to be his date of retirement on the basis of petitioner's date of birth dated 11.5.1937.

2. It transpires that the petitioner was appointed on the post of Class IV in the pay-scale of Rs. 65-72 in the Industrial Training Institute, Darbhanga after following due procedure vide order dated 16.11.1965 issued by the Superintendent, Industrial Training Institute, whereafter the petitioner joined the said service on 25.11.1965 alongwith a doctor's certificate dated 25.11.1965 in which petitioner was not found to be suffering from any infirmity or disease and his age was stated as 21 years. However, much subsequently it was found that in service book his date of birth was given as 11.5.1937, whereafter the petitioner filed a petition dated 9.1.1976 (Annexure-7) before the said Superintendent stating that his date of birth was 25.11.1944 about which he had given in writing at the time of his appointment/ joining, but his date of birth was wrongly

mentioned in the service book as 11.5.1937 which should be corrected. In support of his claim he also filed a school leaving certificate dated 9.1.1955 (Annexure-8) which proved that his date of birth was 25.11.1944.

3. It appears that no order was passed by the authorities on the said petition of the petitioner, whereafter in the gradation lists of 1979 and 1986 the date of birth of the petitioner was mentioned as 11.5.1937. It appears that the matter was considered in the year 1999 and by letter dated 17.5.1999 (annexure-13) the Principal, Industrial Training Institute (respondent no. 4) issued a memo that unless the date of birth of the petitioner is enquired into and verified the payment of his salary shall remain stayed. Thereafter the Civil Surgeon of the District examined the petitioner on the date of his report dated 11.6.1999 (Annexure-3) and on the basis of physical and radiological findings the petitioner was found to be aged 54-55 years old on that date. It further appears that subsequently a Medical Board was also constituted and it also gave the same findings which is reported in memo dated 15.6.1999 (annexure-14). In the said circumstances, learned counsel for the petitioner submits that there was no occasion for the authorities to pass the impugned order, assuming date of birth of the petitioner to be 11.5.1937.

4. On the other hand, learned counsel for the respondents vehemently opposes the contentions of the learned counsel for the petitioner and submits that so far as date of birth of the petitioner mentioned in the service book is concerned, there is cutting and overwriting in the said entry in the service book and therefore it cannot be said to be authentic. It is further stated that two gradation lists were prepared and published, one dated 24.5.1979 and the other dated 7.2.1986 by the Department in which the petitioner's date of birth was given as 11.5.1937, but no objection or representation against those date of births were ever filed by the petitioner and hence the authorities accepted his date of birth mentioned in the two gradation lists. In the said circumstances, he submits that the impugned order was rightly passed terminating his services from the date on which he attained the age of superannuation considering his date of birth to be 11.5.1937.

5. Considering the averments made by learned counsel for the parties and the materials on record it is quite apparent that the respondents have failed to show any basis of their assumption that the date of birth of the petitioner was 11.5.1937, whereas the petitioner had produced the school leaving certificate, the medical certificate, the report of the Civil Surgeon as well as the report of the Medical Board which clearly proved that his date of birth was 25.11.1944. It is not in dispute that the service book of the petitioner contains overwriting/ cuttings and it cannot be deemed to have any authenticity or reliability. Hence, only two documents had been produced by the respondents which are gradation lists of 1979 and 1986 in which the date of birth of the petitioner has been shown to be 11.5.1937, but there is no material whatsoever to show that on what basis the said date of birth has been mentioned specially when the

petitioner had much earlier in the year 1976 filed a petition specifically objecting that his date of birth was not 11.5.1937, rather it was 25.11.1944 which was clear from the medical certificate supplied by him at the time of his joining, but no order was passed on the said petition. Furthermore, from the impugned order of the authority it is quite apparent that it had not considered the specific claim of the petitioner and the materials mentioned above which were on record. In the said circumstances, this writ petition is allowed, the impugned orders of the authority concerned dated 29.8.2001 and 5.9.2001 (Annexure-1) are hereby quashed and the Director, Labour Employment and Training, Bihar, Patna is directed to consider the said matter afresh in the light of aforesaid observations as well as the documents produced by the petitioner and the materials on record and decide it by a speaking order expeditiously, preferably within a period of six months from the date of receipt/production of a copy of this order.