
(2011) 01 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 12823 of 2005

Karu Dusad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0004

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—This writ application has been filed by the petitioner, who happened to be a Chowkidar for a direction upon the respondents to treat the date of birth of the petitioner as 1.6.1961 and to allow him to continue in service till he reaches the age of superannuation. He wants fixing of his date of birth on the basis of so-called opinion of the Medical Board given after his regularization in service instead of 29.5.1950 which has been entered in his service book, when the service book was opened. Averment of the petitioner in the writ application is that he is an illiterate person belonging to Scheduled Caste category and was appointed on the post of Chowkidar on 25.9.1987 under Circle No. 8/1, Fatehpur Police Station in the district of Gaya. As per decision of the State Government the post of Chowkidar became a Class-IV post under the State with effect from 1.1.1990 and the petitioner was also regularized as such. Sometime in the year 1998 all the Chowkidars working in the district, who were otherwise illiterate having no clear evidence of date of birth, were ordered to appear before the Civil Surgeon as per direction dated 1.12.1998. His age in terms of Annexure-2 was determined as 37 and a half years as on 31.1.1999.

2. It is the case of the petitioner that the Circle Officer, Fatehpur wrote a letter to respondent no. 4 seeking direction as to what has to be done with regard to correction of date of birth of the petitioner in his service book in light of the Medical Board's opinion. A request was also made by the petitioner before the

Circle Officer for correction of his date of birth in the service book but no step was taken. In absence of correction made in the service book, petitioner has been made to retire with effect from 31.5.2010 which would be evident from a letter issued by the Circle Officer, Fatehpur where the name of the petitioner figures at serial no. 4 and which has been brought on record alongwith I.A. No. 7833 of 2010.

3. Submission of Learned Counsel for the petitioner is that in light of the Medical Board's opinion contained in Annexure-2 it was the duty of the respondent State to correct the date of birth entered in the service book of the petitioner and to allow him to continue on the post till he reached the age of superannuation. Failure on the part of the State to take a decision within the time frame in light of the evidence contained in Annexure-2 will not accrue in favour of the State.

4. A counter affidavit has been filed on behalf of the State wherein the State has taken a stand that the retirement of the petitioner is based on his date of birth entered in his service book. He was initially appointed on the post of Chowkidar on 25.9.1987. Petitioner had put his thumb impression on the service book as a proof of entry made therein. The District Magistrate had ordered for verification of the age of such persons wherein no date of birth had been entered in the service book which was not the case of the petitioner. Petitioner obtained the Medical Board's opinion which was already looked into and rejected by the Collector, Gaya of which the petitioner had full knowledge. Thereafter he chose to sleep over the matter and rake up the issue just before his retirement, looking for a quick wind fall.

5. Petitioner appeared before the Court in person and the Court after looking into the records as well as physical presence of the petitioner had serious doubt about the authenticity of the so-called Medical Board's opinion contained in Annexure-2 with regard to the age recorded therein.

6. For after all there cannot be such wide variance in the age with regard to the date of birth recorded in the service book and the opinion expressed by the Civil Surgeon on 31.1.1999. The Court further had serious doubt on the opinion of the Civil Surgeon because he gave a precise age of the petitioner to be 37 and half years which no medical jurisprudence supports. Any medical opinion with regard to age of a person cannot be given in such exactitude and, therefore, to test the validity of the medical opinion and the authenticity of the claim of the petitioner, the Court directed the petitioner to appear before the Medical Board constituted at Patna Medical College & Hospital to be headed by the Head of Department of Medicines, P.M.C.H. The background in which such a direction came to be issued is evident from the order of this Court dated 15.9.2010. Petitioner was subjected to test and a report thereof was submitted to this Court in a sealed cover. The Medical Board's opinion was also handed over to the Learned Counsel for the petitioner to respond in view of the findings rendered therein.

7. The Medical Board's report is on record. The Board consisting of the four

members have given their opinion about the age of the petitioner to be between 58-60 years. If this opinion of the experts is correct, then on the face of the same obviously Annexure-2 was an obtained type of document with the object of prolonging the service of the petitioner under the State for the obvious reason since from 1.1.1990 post of Chowkidar became a Government post, which entailed many a benefits. Petitioner, therefore, wanted to hang on to the post as long as he could.

8. After the opinion of the Medical Board of P.M.C.H., Learned Counsel for the petitioner abandoned his claim with regard to his assertion that his date of birth should be treated as 1.6.1961 instead of 29.5.1950. His contention is that in light of some decisions rendered by this Court in similar circumstance, petitioner should beget the benefit of lower age determined by the Medical Board since in the opinion of the Medical Board age of the petitioner has been shown to be between 58-60 years. His age should be treated to be 58 years and he should be allowed to continue in service till he reaches the age of 60 years. Some of the decisions in this regard are the cases of Bihar Electricity Board Vs. Bihar Powers Workers Union and Others, , In the matter of News reports published in the Times of India, dated 26th June, 2006 Vs. The State of Bihar and Others, and Rajendra Mishra Vs. The Bihar State Electricity Board and Others, .

9. The question, therefore, arises now whether any kind of interference is warranted in this case or whether the principles decided in some of the cases relied upon by the petitioner, referred to above, will have application to the case of the present petitioner as well.

10. The Court is of the opinion that the principles laid down by the decisions, referred to above, cannot be applied to the case of the present petitioner because petitioner was subjected to Medical Board on the orders of this Court to verify the authenticity of the claim of the petitioner or the genuineness of the assertions made in the writ application. It is the stand of the petitioner in the writ application that according to him, he is 1961 born based on the opinion of Civil Surgeon, contained in Annexure-2 and that he had a right to continue on the post of Chowkidar till he reaches the age of 60 years. Copy of the service book annexed by the petitioner himself as Annexure-1 has stated his date of birth as 29.5.1950. Even if it is accepted that the petitioner did not know what had been recorded in the service book but the present Medical Board's assessment as to the age of the petitioner more or less coincides with the date of birth recorded in the service book of the petitioner. His age has been determined between 58-60 years and if the petitioner is treated to be born in 1950, then he does reach the age of 60 years in the year 2010 and it cannot be his case now that he is of 49 years of age. In that view of the matter, no direction surely can be given upon the respondents to correct the date of birth of the petitioner in the service book on the basis of the earlier opinion of the Civil Surgeon, Gaya contained in Annexure-2 which was a begotten document to sub-serve the interest of the petitioner.

11. In so far as extending the benefit of the ratio of the decisions to the petitioner are concerned, the same cannot be extended to him for the simple reason that if the authenticity of the claim of the petitioner fails and the assertions made in the writ application by the petitioner with regard to his age has otherwise been found to be false and misleading, as has been corroborated by the new opinion of the Medical Board, then this Court is not willing to extend the helping hand to the petitioner because every person is expected to approach the Court with clean hands and the petitioner has not approached the Court with a clean hand by stating the true facts. In fact, it is a kind of gamble which the petitioner was trying to play to beget benefit of extended age of superannuation on the face of what had already been recorded in the service book on the basis of the Medical Board's opinion which did not indicate true state of affair and when the facts are established otherwise.

12. This is a case, in the above stated circumstance, which does not warrant any interference by this Court. This writ application has no merit and, therefore, it must fail. This writ application is dismissed.