

(1999) 05 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 6473 of 1993

Meghraj Prasad

APPELLANT

Vs

The Bihar State Electricity Board, Patna and Others

RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Citation : (1999) 3 PLJR 346

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Shrinandan Prasad Singh and Prabhat Kumar Singh, for the Appellant; Shivendra Kishore, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed by the Petitioner with a prayer for quashing the order dated 17.4.1993, as contained in Annexure-8, by which Respondent No. 2, the General Manager-cum-Chief Engineer, Bihar State Electricity Board (hereinafter called the said Board), Patna has dismissed the Petitioner from the post of Chowkidar.

2. The facts of the case shortly put are that the Petitioner's father Ram Lakhan Prasad, an un-skilled Khalasi of the Electric Supply Division, Nawadah died in harness and the Petitioner being the youngest son of his father was appointed as a Chowkidar by letter dated 10.8.1991. It is not in dispute that the said deceased Ram Lakhan Prasad had three sons, out of whom one is the Petitioner and other two are Naresh Prasad and Mundrika Prasad (Respondent No. 6). Out of the three sons, the Petitioner applied for appointment on compassionate ground and thereafter he was called for an interview and thereafter was appointed. After the Petitioner was appointed, one of the elder brother Mundrika Prasad (Respondent No. 6) filed a writ petition for cancellation of the appointment of the Petitioner. The said writ petition was numbered as C.W.J.C. No. 6357 of 1991 and in the said writ petition this Court noted the grievances of Respondent No. 6 who filed the same and gave certain directions. It appears

from the order dated 3.10.1991 by which the said writ petition was disposed of that the grievance of Respondent No. 6 was that the Petitioner was not eligible for appointment because of his age since he was of 15 years of age at the time of his appointment. The further grievance of Respondent No. 6 was that in terms of the policy decision such dependent of the deceased employee can be appointed who is above 18 years of age, In view of the aforesaid complaint, a learned Division Bench of this Court disposed of the said writ petition with the following directions:

In view of the controversy aforesaid, it is not possible to make any positive order in this case. We, accordingly, dispose of this application with a direction to the Respondent Board to consider the question as to whether Meghraj Prasad was eligible for appointment or not. If it is found after enquiry that he was not eligible for appointment, the case of the Petitioners should be considered for such appointment. We may also observe that if ultimately as a result of the aforesaid enquiry, the appointment of Meghraj Prasad has to be terminated, an opportunity of hearing must be given to him. On the other hand, if the Board ultimately come to the conclusion that Maghraj Prasad was eligible for appointment, an opportunity of hearing should be given to the Petitioner. The enquiry must be concluded within a reasonable time.

3. Pursuant to the aforesaid direction of the Division Bench of this Court, a show cause notice was issued to the Petitioner to which the Petitioner gave his reply and thereafter a personal hearing was given. The Petitioner also attended the personal hearing. In the reply to the show cause which was given by the Petitioner, the Petitioner's stand was that so far as his age was concerned, there had been mis-statement by him and about the school leaving certificate which was appended by his elder brother, the Petitioner was not aware of the same. The Petitioner asserted that he was given the appointment after he became major. When this enquiry was pending, Respondent No. 2 asked the Civil Surgeon, Patna to determine the age of the Petitioner by ossification test by letter dated 15.1.1993. When the matter was thus pending consideration, Respondent No. 6 filed another writ petition before this Court and the said writ petition was numbered as C.W.J.C. No. 2474 of 1992. The said writ petition contained the similar prayer for quashing the appointment of the writ Petitioner and the said writ petition was also disposed of by an order dated 7.9.1992. The said order dated 7.9.1992 is set out below:

The Petitioner had earlier come to this Court in C.W.J.C. No. 6357 of 1991 which was disposed of on 3.10.1991 with an observation that the authorities concerned should hold enquiry into the matter and pass final orders. A counter-affidavit has been filed on behalf of the Board in which it has been stated that enquiry has been completed.

In that view of the matter, we dispose of this application with a direction to the Respondents concerned to pass final order on the enquiry within three months from the date of receipt/ production of a copy of this order.

4. Since by the said order dated 7.9.1992 a time frame was imposed by this Court, the authorities of the Board had to expedite the passing of the final order and passed the final order of termination of service of the Petitioner without waiting for the Medical report which was demanded by them in connection with the enquiry of the Petitioner age.

5. The Medical report was submitted on 4.6.1993 but the final order was passed on 17.4.1993. This Court finds this a serious errors in the decision making process.

6. It is clear from the facts narrated here-in-above that in the instant case the Respondent Board did not on their own initiated the departmental proceeding against the Petitioner but the proceedings were initiated under the orders of this Court. Under the first order of this Court dated 3.10.1991 the proceeding was initiated primarily on the basis of the complaint of the Petitioner's brother Respondent No. 6 that the Petitioner was appointed at the age of 15 years and on such complaint the Division Bench of this Court directed the authorities to find out whether the Petitioner was eligible for appointment at the time of his appointment and the enquiry was thereafter initiated and in connection with the said enquiry the Respondent Board called for a Medical report. Therefore, the said Medical report was called for in connection with the said enquiry itself. Thus, the said Medical report has a considerable importance on the outcome of the enquiry report but it appears that Respondent No. 6 became impatient and filed another writ petition with the same prayer and another Division Bench of this Court fixed a time limit on the said Board for passing the order. As the aforesaid time limit was imposed upon the said Board, the Board did not wait for the medical report but passed the order in its absence. But the medical report which was submitted after ossification test shows that the Petitioner was within 23-25 years of age on 4.6.1993. It is admitted position that in such cases, the lesser age given in the medical report is always accepted. Even if that is accepted, the Petitioner becomes 21 years of age on the date of his appointment which is 10.8.1991 and the age which has been declared by the Petitioner substantially tallies with the same because from annexure-1 which is dated 10.8.1991 it appears that the Petitioner's date of birth was declared as 2.6.1970. Therefore, on the date of appointment the Petitioner was of about 21 years of age. So, the date of birth of the Petitioner substantially tallies with the medical report. Going by these materials on record, namely, the medical report which has been obtained by the Respondents themselves, it is difficult to accept that the Petitioner gave a wrong age at the time of his appointment or the Petitioner was aged about 15 years at the time of his appointments as alleged by Respondent No. 6.

7. This court on the materials on record is of the view that finding of the Respondent Board is wrong. The Respondent Board has also terminated the Petitioner's service as he had given "wrong age and sought employment by mis-representation". This mis-representation must be read as having connection with

the age. Therefore, a mere reading of the impugned order shows that the reasons given in the termination order is that the Petitioner obtained employment by making mis-representation about his wrong age. But this finding in the termination order cannot be sustained having regard to the evidence which has been obtained by the Respondent Board itself from the Medical Board. Therefore, on merits also the termination order is bad.

8. Apart from the merits, on the question of procedure also the same is bad inasmuch as the said Board should have waited for the medical report before passing the final order.

9. Learned Counsel for the said Board has, however, stated before this Court that on an enquiry having been made it has been found that the certificate which has been submitted by the Petitioner is a forged or fake certificate and if a certificate is found to be forged or fake, then in terms of the clause in the appointment letter, his appointment should have been terminated.

10. This Court cannot accept this condition having regard to the fact that the Petitioner's service was terminated only because of his making a mis-representation about the age and not for filing any fake certificate at the time of his appointment. Therefore, having regard to the complaint made before this Court and the direction given by it and also having regard to the impugned order of termination, this Court cannot sustain the same as it is of the opinion that the Petitioner was major and the declaration of age which has been given by the Petitioner at the time of obtaining appointment substantially tallies with the medical report.

11. The impugned order at Annexure-8 is hereby quashed. The Petitioner should be reinstated in service within a period of seven days from the date of receipt/ service of a copy of this order upon Respondent No. 3, the Secretary of the said Board. It is made clear that the Petitioner will not get anything by way of back wages. but he should be reinstated forthwith and should be given salary which is due and payable to him in the scale which would have been due and payable to him if there has been no order of termination. In the meantime his seniority should also be maintained according to his previous date of appointment. This Court, however, makes it clear that nothing said in this order will prevent the Respondent Board from initiating any proceeding against the Petitioner in accordance with law, if they are so advised.

12. With the above observation/direction, this writ petition is allowed to the extent indicate above. The impugned order at Annexure-8 is hereby quashed. There will be no order as to cost.