
(1994) 09 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 6674 of 1994

Mokhtar Ahmad

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

Bihar Service Code, 1952 — Rule 54, 73

Citation : (1994) 09 PAT CK 0021

Hon'ble Judges : Aftab Alam, J;A.N. Trivedi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Petitioner in this application is working as Traffic Inspector in the Bihar State Road Transport Corporation (hereinafter called as "the Corporation."). He seeks to challenge the order communicated to him under memo No. 7549, dated 22.07.94 in terms of which he was superannuated from service with effect from August 31, 1994, that is, about a year and a half before he would complete the age of 58 years on the basis of his date of birth as recorded in his service book.

2. The Petitioner claims that his date of birth is February 1, 1938, This is evidenced from his matriculation certificate, a photostat copy, of which is at Annexure-1. It is also not in dispute that it was this date which was recorded as his date of birth in the service book opened shortly after his entry in service. The Corporation, in fact, does not deny or dispute this position. It is obvious that calculating from this date (01.02.38) the Petitioner would complete the age of 58 years in February, 1996. It is also an admitted position that, the Petitioner was appointed as a Conductor on August 26, 1954, that is to say, when he was 16 years, 6 months and 25 days old. It is also admitted that the provisions of the Bihar Service Code have been adopted by the Corporation and apply to its employees.

3. The stand of the Corporation in superannuating the Petitioner with effect from

August 31, 1994 is founded on the premise that no person could gain employment before attaining the age of 18 years. Proceeding from this, it is stated that the Petitioner's age on the date of his appointment, therefore, must be presumed to be 18 years and on that basis his date of birth would work out to be August 26, 1936. He would, thus, complete the age of 58 years on 26.08.94 and would, therefore, superannuate on August 31, 1994. This is what the impugned order, dated 22.07.94 (copy at Annexure-3) states.

4. It is self evident that unless the basic premise that no person could gain employment before attaining the age of 18 years was legally justified, the impugned order must fall to the ground. Having heard learned Counsel for the Petitioner and the Corporation we are actually faced with this position. No statutory provision, either the Bihar Service Code or any other statutory rule or regulation was brought to our notice to justify the assumption that no one could get employment before attaining the age of 18 years. Rule 54 of the Bihar Service Code fixes the upper age limit for admission into pensionable Government service; it is in the following terms:

54: Except as otherwise expressly provided in rules regulating the methods of recruitment to a particular service or post a person whose age exceeds twenty five years and in the case of a person belonging to the scheduled castes and backward tribes whose age exceeds 28 years may not be admitted into pensionable service of Government. The State Government, however, may relax this rule in special cases. (emphasis added)

Rule 73 fixing the age of retirement is as follows:

3: The day of compulsory retirement of a Government servant is the date on which he attains the age of 58 years. He may be retained in service after the day of compulsory retirement with the sanction of the State Government on public grounds, which must be recorded in writing.

5. It is to be noted at this stage that Rule 73 envisages that a person would retire only on attaining the age of 58 years and does not say that a person would retire either on attaining the age of 58 years or on completing 40 years in service. In our opinion, therefore, there can be no justification for retiring the Petitioner by arbitrarily pushing back his date of birth and assigning him an imaginary date of birth.

6. This was only one aspect of the matter. In the facts of this case, however, we are of the opinion that it would be difficult, to sustain the impugned order even if there was some provision imposing restriction on appointment of a person below the age of 18 years. This is for the simple reason that there is no allegation that there was any misrepresentation or suppression on the part of the Petitioner in disclosing his date of birth at the time of his appointment.

7. It is an admitted position that at the time of his appointment the Petitioner declared his date of birth as February 1, 1938 and this date was entered into his

service book as his date of birth. The Petitioner even gives an explanation, which we find quite plausible, for his entry into employment at the young age of 16 years and 6 months. It is stated in the writ petition that in his school days he was a good player of foot ball and after passing the matriculation examination he was given appointment on sports quota. It is also to be noted that at that time the Corporation was yet to come into existence and the Petitioner was appointed in the Transport Department of the Government of Bihar. It is further stated that on his appointment he was included in the Department's foot ball team and he used to play matches for the department. It was only after his sporting age was over that he started working in the department and discharged his duties to the complete satisfaction of his superiors and also got promotions. It is also stated that his service record is wholly clean.

8. In the counter affidavit filed on behalf of the Corporation these submissions have not been controverted. It is, thus, apparent that when the Petitioner was appointed at the age of 16 years and 6 months it was within the complete knowledge of the employer and even in case there was any prohibition against appointment of a person below the age of 18 years the same was waived by the employer in consideration of getting hold of a good foot ball player. In that view it is no longer open for the Corporation after forty years to turn back and to say that the initial appointment being bad his date of birth must be pushed back by a year and a half. In our opinion, such an action would be wholly unreasonable and arbitrary.

9. We are, therefore, of the opinion that this application must succeed and we allow it by setting aside the impugned order, dated 22.07.94. It is consequently directed that the Petitioner must be allowed to continue in service till he attains the age of 58 years on the basis of his date of birth being 01.02.38 as recorded in the service book.

10. In the result, this application is allowed. No order as to costs.