

(2019) 07 PAT CK 0250

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3061 Of 2005

Nirmala Jha And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Bihar Home Guards Rules, 1953 — Rule 53

Citation : (2019) 07 PAT CK 0250

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Pravina Kumari Rai

Final Decision : Dismissed

Judgement

Heard learned senior counsel for the petitioners and learned counsel for the respondents-State.

Since original petitioner, namely, Radharaman Jha died during the pendency of the writ proceedings, his legal heirs had been substituted in his place vide order dated 20.08.2010.

Original petitioner was given earlier communication dated 26.02.2004 whereby and whereunder he had been made to superannuate with effect from 29.02.2004. The same was done treating his date of birth as 14.02.1946.

Original petitioner was appointed in terms of rule 53 of Bihar Home Guards Rules which required him to be at least 19 years of age on the date of his appointment.

Since as per age of original petitioner in matriculation certificate, he did not fulfill this requisite criteria he was served show cause notice in this respect. He responded to the same on 03.09.1997 which was received by the competent authority on 25.10.1997. On receipt of show cause, respondent-authorities took a decision which is annexure 2 to the writ petition dated 31.12.1997. The

Committee, treating original petitioner as 19 years of age, submitted its report treating his date of birth to be 14.02.1946 and appointed the petitioner. Original petitioner had taken benefit of said report and decision annexure 2 treating his date of birth to be 14.02.1946 to continue in his service, though admittedly, as per date of birth in his matriculation certificate, he did not possess requisite 19 years of age which was required for entry in service. Specific averments of writ petitioner in respect of decision dated 31.12.1997 are in paragraphs 4, 5, 6 and 7 of writ petition. It is the specific case that at the time of appointment in service, his age was recorded as 19 years. It is also specific case that incorrect date of birth was recoded in the service book. It is also his case that he was served show cause notice in this respect and he had submitted show cause to the Committee.

Learned Senior Counsel for the petitioners submits that date of birth of original petitioner was 16.08.1947. The order dated 26.02.2004 treating his superannuation with effect from 29.02.2004 is unjustified as he has been made to retire one and half year prior to what was due in terms of the date of birth as per matriculation certificate, copy of which is annexure 1 to the writ petition. In support of his claim, reliance is placed by learned senior counsel on Full Bench judgment of this Court in the case of Ragjawa Narayan Mishra vs. The Chief Executive Officer, Bihar Rajya Khadi Gramoudyog Board & ors reported in 2006 (1) PLJR 410.

Submissions advanced by learned senior counsel for the petitioners are two fold.

Firstly, respondents have not placed on record any material to show that minimum requisite age of entry in service in Home guards was 19 years. Said requirement is presumed and cannot be made basis for determination of petitioner's age. Other submission advanced by learned senior counsel is that in view of law declared by Full Bench, original petitioner has a right to continue in service for 40 years.

Facts in the decision of Full Bench and the instant case are more or less identical.

The issue is whether original petitioner having availed undue advantage of decision dated 31.12.1997 determining his date of birth as 14.02.1946 can be permitted to turn around and challenge the same after his retirement, to contend that his retirement should be based on different dates of birth i.e. date of birth in his matriculation certificate. Full Bench in the case referred to by learned senior counsel has dealt with this aspect of the matter clearly that if candidate has availed determination of age at the time of entry to gain an undue advantage he would retire on attaining age of 58 years or completing 40 years of service whichever is earlier based on determination of age he has obtained employment and he cannot invoke the equitable jurisdiction under Article 226 of the Constitution of India to claim any higher benefits. This court would consider it useful to quote paragraph 17 of Full Bench Judgment in the case of Ragjawa Narayan Mishra (supra).

"Thirdly, it is settled and established proposition of law and principles of jurisprudence that a person who takes undue advantage by one or other reasons at the entry point in the service cannot be allowed to urge that he be given higher benefit and it is urged then, clearly, it goes to show that something wrong or irregular has been done, at the entry point, in service. So the settled principle, also, creates a very strong impediment in getting the relief from this Court which is exercising extraordinary, prerogative, equitable and discretionary writ jurisdiction by invocation of the provision of Article 226 of the Constitution of India".

In view of admitted position arising out of averments made in paragraphs 4 to 7 to writ petition, original petitioner availed benefit of decision dated 31.12.1997 annexure 2 to enter into service treating his date of birth as 14.2.1946, he, therefore, cannot be permitted to turn around and challenge the same and claim superannuation from subsequent date, i.e. 16.08.1947. He will have to superannuate on attaining 58 years of age or on completion of 40 years of service whichever is earlier, treating 14.02.1946 to be his date of birth.

Writ petition is devoid of merit and the same is dismissed.