
(2015) 03 PAT CK 0095
In the Patna High Court
Case No : CWJC No. 16158 of 2007

Paras Nath Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 PLJR 646

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Ashok Kumar Singh and Ranjeet Kumar Pandey, for the Appellant;
Prashant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Ashok Kumar Singh, learned senior counsel, who was assisted by Sri Ranjeet Kumar Pandey, learned counsel for the petitioner and Sri Prashant Kumar, learned A.C. to Govt. Pleader-18. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for directing the respondents to amend the date-of-birth of the petitioner in his Service Book as "27.6.1949" instead of "3.10.1948". He has also prayed for quashing of an order contained in letter No. 493 dated 7.4.2006, issued under the signature of the respondent No. 3/Executive Engineer, whereby the petitioner was informed that he was going to superannuate w.e.f. 31st October, 2008 and it has been pleaded that petitioner's date-of-retirement be treated as 30th June, 2009 instead of 31st October, 2008.

2. Short fact of the case is that the petitioner was appointed as Assistant Mechanic in Kshetra Yantra Pramandal Balmiki Nagar, vide letter dated 23.6.1967 and he joined immediately thereafter. After noticing a communication issued by the Executive Engineer, whereby the date of retirement of petitioner along with others were intimated, the petitioner was surprised to notice that he was to retire w.e.f. 31.10.2008. Thereafter, the petitioner immediately filed

representation before the Executive Engineer for correcting the date of retirement of the petitioner. Since no action was taken by the respondent concerned, the petitioner was constrained to approach this Court by filing the present writ petition on 10.12.2007.

3. Learned senior counsel, who has appeared on behalf of petitioner submits that since the petitioner was an illiterate, at the time of appointment, he produced a certificate issued by the Civil Assistant Surgeon, which was issued on 28th June, 1967, wherein the age of petitioner was mentioned as 18 years. However, in the Service Book, date-of-birth of the petitioner was recorded as 3.10.1948. By referring to Annexure-"3" to the writ petition i.e. photocopy of the 1st page of the Service Book, learned counsel for the petitioner tried to impress upon the Court that some interpolation was done in the last digit of the year mentioned in the Service Book. It has been indicated that instead of 3.10.1949, it has been interpolated as 3.10.1948. It was submitted that if there was any reason for making correction in the Service Book in respect of date-of-birth, in view of provision contained in Rule 233 of the Bihar Boards Miscellaneous Rules, the correction should have been done in the "Red Ink", however; it has not been done. Reliance has also been placed on Rules 96 & 97 of the Bihar Financial Rules as well as Rule 162 of the Bihar Boards Miscellaneous Rules. It has been argued that as per Rule 162 of the Bihar Boards Miscellaneous Rules, Service Book is required to be kept in office and there was no occasion to the petitioner to examine any interpolation in the Service Book in respect of date-of-birth recorded. According to learned counsel for the petitioner, the date of retirement has incorrectly been modified and in the Service Book, date-of-birth has been interpolated from 3.10.1949 to 3.10.1948.

4. Learned State Counsel has opposed the prayer of the petitioner. He submits that after the joining of the petitioner, Service Book was opened and in the Service Book, date-of-birth of the petitioner was recorded as 3.10.1948. It was also countersigned by the petitioner, which is evident from the Annexure-"3" of the present petition. Referring to Annexure-"2" to the writ petition i.e. certificate issued by the Civil Assistant Surgeon, learned counsel for the State has argued that said certificate has been issued on 28th June, 1967 i.e. after the date of appointment of the petitioner. He further emphasizes that on perusal of the certificate, it is evident that it was disclosure made by the petitioner that he was about 18 years and the Assistant Civil Surgeon has also recorded 18 years by appearance. According to learned counsel for the State, on the basis of such certificate, it cannot be conclusively approved that his date of retirement was 28.6.1949 (sic), as claimed by the petitioner. Learned counsel for the State has submitted that there is no interpolation in the Service Book, however; subsequently, in the year 1992, some confusion was raised by the Executive Engineer, vide Annexure-"4" to the writ petition and thereafter, the Chief Engineer clarified that it should be settled in view of date-of-birth recorded in the Service Book i.e. 3.10.1948.

5. In this case, earlier by order dated 20.2.2015, the State Counsel was directed to produce original Service Book of the petitioner, which was yesterday i.e. 23.3.2015 produced and kept on record.

6. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Of course, in the digit of "8" in the year, it appears that some overwriting has been done, but fact remains that on perusal of such thing conclusively, it cannot be decided that it was interpolation due to the reason that in the Service Book at three, places, date-of-birth has been recorded as 3rd October, 1948. Moreover, if the claim of the petitioner regarding the date-of-birth is accepted on the basis of Annexure-"2" i.e. certificate issued by the Civil Assistant Surgeon, it cannot be said that the date-of-birth of the petitioner would be 3rd October, 1949. Moreover, the certificate i.e. Annexure-"2" issued by the Civil Assistant Surgeon, conclusively does not indicate the exact date-of-birth, only tentatively, the age of the petitioner as 18 years has been recorded. Once in the Service Book, date-of-birth was recorded as 3.10.1948 after expiry of ten years, in view of Rule 96 of the Bihar Financial Rules, there was no reason to entertain any objection. Moreover, during the pendency of the writ petition, the petitioner already superannuated as per the date-of-birth recorded in the Service Book. Since earlier, no dispute was raised or no objection was raised regarding correction of date-of-birth, at subsequent stage i.e. expiry of ten years, such objection was not required to be entertained and as such, I do not find any justification in passing any favourable order.

7. Accordingly, the writ petition stands dismissed. The Service Book of the petitioner is returned to the learned State Counsel.