
(2005) 05 PAT CK 0072
In the Patna High Court
Case No : CWJC No. 12251 of 1999

Pashupati Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Bihar Financial Rules — Rule 96

Citation : (2005) 3 PLJR 460

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Tej Bahadur Singh, for the Appellant; S. Alamdar Hussain For the State, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner, at the relevant time was a Sub-Inspector in the Bihar Police, has filed this writ application for a direction to the Director General-cum-Inspector General of Police, Bihar, Patna, Respondent No. 2 to dispose of the representation dated 11.11.1999, Annexure-4 whereunder he had requested Respondent No. 2 to permit him to continue until he reached the age of superannuation as per the date of birth recorded in the Matriculation Certificate, bearing No. 47297 dated 1.10.1961, which was also the date initially recorded in his Service Book. During the pendency of the writ petition, the authorities considered the request of the petitioner contained in the aforesaid representation and rejected the same under order, bearing Memo. No. 6772 dated 17.10.2000, Annexure-6 to the Interlocutory Application. By filing I.A. No. 1186 of 2005, petitioner has even challenged the aforesaid order contained in Memo. No. 6772 dated 17.10.2000, as contained in Annexure-6 to the said Interlocutory Application on the ground that the same has been passed contrary to the provisions contained in Rule 96 of the Bihar Financial Rules as also contrary to the date of birth recorded in the Matriculation Certificate of the petitioner, bearing No. 47297 dated 1.10.1961,

which was issued even prior to his entry in the service of the Bihar Police on the basis of which the date of birth column of his Service Book was also filled up.

2. Petitioner who appeared in Matriculation examination conducted by the Bihar School Secondary Examination Board in the month of February, 1961 and passed the said examination in 2nd Division and in token of having passed the Matriculation examination was granted Matriculation Certificate, bearing No. 47297 dated 1.10.1961, appeared to participate in the selection test for appointment on the post of constable in Bihar Police, pursuant to the advertisement published in the Newspaper. While participating in the selection test, petitioner having become successful in the physical selection test and having attained the minimum qualifying standards was appointed as a constable in Bihar Police on 13.8.1964. In terms of the appointment letter, petitioner joined the post of constable and thereafter his Service Book was opened in which his date of birth was recorded as 20.3.1947 on the basis of the aforesaid Matriculation Certificate. On the basis of the appointment and the aforementioned Service Book, petitioner continued to serve the Bihar Police as a constable and after completing training successfully he was even promoted as Assistant Sub-Inspector of Police and Sub-Inspector of Police with effect from 1.8.1988. After completing 24 years of service he was served with a copy of Letter No. 1026 dated 5.4.1999, Annexure-2 whereunder he was informed that there is overwriting in the date of birth column of his Service Book and he should produce his Matriculation Certificate before the Superintendent of Police, Saran at Chapra and necessary verification is also being made from the Senior Superintendent of Police, Ranchi who had initially appointed the petitioner as a constable in the year 1964. In response to the instructions contained in the aforesaid letter dated 5.4.1999, Annexure-2, petitioner produced his original Matriculation Certificate before the Superintendent of Police, Saran at Chapra and in token of the said fact, receipt dated 8.4.1999, Annexure-3 was granted to him. As no action was taken on the basis of the Matriculation Certificate of the petitioner even after he produced the same before the Superintendent of Police, Saran at Chapra on 8.4.1999, he submitted a representation before the Director General-cum-Inspector General of Police, Bihar, Patna, Annexure-4 whereunder once again he informed the authorities that the overwriting in the Service Book may have been done at the instance of his enemies only with a view to harm him as no sooner he was appointed as constable he produced the original Matriculation Certificate on the basis of which 20.3.1947 was recorded as his date of birth in the Service Book which has now been interpolated by some one only with a view to harm him as the petitioner had no reason to interpolate the entry made in the Service Book which is recorded on the basis of his Matriculation Certificate. Representation dated 11.11.1999, Annexure-4 remained pending and petitioner filed this writ application for a direction to the Director General of Police, Bihar, Patna on 15.12.1999 to dispose of the same.

3. It appears from the counter affidavit and the supplementary counter affidavit filed on behalf of Respondent No. 3 that Superintendent of Police, Saran at

Chapra during the pendency of this writ application passed the order dated 14.3.2000, Annexure-A to the counter affidavit whereunder he said that the petitioner has applied for correction of his date of birth more than ten years after his entry in the Police Service, as such, his request to correct the date of birth in the Service Book is contrary to the provisions contained in Rule 1041B of the Bihar Police Manual and Rule 96 of the Bihar Financial Rule Part I in terms whereof request to correct the date of birth recorded in the Service Book should be made within ten years of its recording. From the supplementary affidavit, it appears that the representation of the petitioner dated 11.11.1999, Annexure-4 submitted before the Director Generalcum-Inspector General of Police, Bihar, Patna was also disposed of under 17.10.2000, Annexure-6 refusing to correct the date of birth since the representation for correcting the same was received after ten years of his entry into the police service.

4. Learned counsel appearing in support of this application has contended that the order of the Superintendent of Police, Saran at Chapra dated 14.3.2000, AnnexureA to the counter affidavit and the orders of the Director General-cum-Inspector General of Police, Bihar, Patna dated 17.10.2000, Annexure-6 to the Interlocutory application is contrary to the provisions contained in Rule 96 of the Bihar Financial Rules as also Rule 1041B of the Bihar Police Manual which, inter alia, provides that any correction in the date of birth should be made within ten years of its recording. According to the petitioner when he was appointed as constable and the Service Book was opened, his date of birth was recorded as 20.3.1947 on the basis of date of birth recorded in Matriculation Certificate. Once the date of birth was recorded in the Service Book on the basis of Matriculation Certificate, according to the learned Counsel, it should have been corrected only after notice to him and not by interpolating the same as was done in the present case by any person who was trying to harm the petitioner as petitioner had neither any occasion nor any need to interpolate the entries recorded in the Service Book.

5. On the other hand, learned State Counsel, Sri. S. Alamdar Hussain submitted that as per the date of birth recorded in the Matriculation Certificate, the petitioner was under age on the date of his appointment, yet he was appointed contrary to the provisions contained in Rule 663(Ka) of the Bihar Police Manual, which inter alia, provides that only persons in between 18-25 years would be appointed as constables. He further submitted that when the petitioner was appointed on 13.8.1964 he was 17 years and 6 months and when he realized that he was under age on the date of his appointment and he may be removed from service on that ground then he himself interpolated the entries recorded in the Service Book so that he may not be removed from service on the ground of under age on the date of his appointment. Learned State Counsel further submitted that the interpolation made in the Service Book should be examined by the Forensic Science expert and then it should be found out as to who has made interpolation in the Service Book of the petitioner. In support of the aforesaid contention, learned counsel for the State further relied on the orders of

this Court dated 18.7.2000, passed in the case of Mangal Rai vs. The State of Bihar & Ors. CWJC No. 6097 of 2000, Annexure-B whereunder this Court refused to entertain the dispute in regard to date of birth when petitioner approached this Court at the fag end of his service. In the present case also petitioner approached this Court only a few months prior to his retirement and thus this writ petition should also be dismissed and petitioner should be relegated to the Civil Court for ventilation of his grievances.

6. Having heard counsel for the parties and having perused the pleadings filed by them, including the Original Service Book as also the original Matriculation Certificate, bearing No. 47297 dated 1.10.1961, I am of the view that the petitioner was appointed as a constable on 13.8.1964 whereafter his service book was opened in which initially his date of birth was recorded as 20.3.1947 on the basis of the entries recorded in the aforesaid Matriculation Certificate, which was later interpolated as 20.3.1942 and when the interpolation was noticed, the Superintendent of Police, Saran at Chapra issued Memo No. 1026 date 5.4.1999, Annexure-2 requesting the Senior Superintendent of Police, Ranchi to make necessary verification in regard to the interpolation in the Service Book as also directed the petitioner to produce his original Matriculation Certificate. In compliance of the instruction of the Superintendent of Police, Saran at Chapra contained in Annexure-2, petitioner made available the aforesaid Matriculation Certificate and in token of having made available a copy of the Matriculation Certificate, receipt dated 8.4.1999 was granted. Having received the original Matriculation Certificate the Superintendent of Police, Saran at Chapra, Respondent No. 3 should have resolved the controversy that 20.3.1947 is the date of birth of the petitioner as recorded in his Matriculation Certificate.

7. Once the date of birth was entered in the Service Book as 20.3.1947, in my opinion, petitioner had neither occasion nor any necessity to interpolate the same to his own detriment. Submission of the State Counsel that petitioner himself may have interpolated the date of birth recorded in the Service Book only to ensure that he is not found to have been appointed as under age, is wholly misconceived as perusal of Rule 663 (Ka) itself would indicate that thereunder ordinarily persons in between the age of 18-25 years were required to be appointed a constable in the said Rule there is no prohibition that any one who is approaching 18 years should not be appointed as such.

8. In the instant case when the petitioner was appointed he was short by six months in attaining the minimum age and if the authorities chose to appoint him with eyes open as the Matriculation Certificate was produced before them on the basis of which the entries were initially recorded in the Service Book then after more than ten years from the date of his initial appointment the authorities cannot be allowed to alter the date of birth contrary to what is recorded in the Matriculation Certificate as the authorities are also bound by the same embargo contained in Rule 96 of the Bihar Financial Rules as also Rule 1041(B) of the Bihar Police Manual. The order dated 14.3.2000, Annexure-A to the counter

affidavit and order dated 17.10.2000, AnnexureA to the supplementary counter affidavit and Annexure-6 to the Interlocutory application, whereunder the authorities have decided to ignore the date of birth of the petitioner as recorded in the Matriculation Certificate appears to be arbitrary and is accordingly quashed as for the reasons explained above, as petitioner had no occasion to interpolate the Service Book to his own detriment. Respondents are accordingly directed to continue the petitioner on the post which he was holding until he reached the age of superannuation as per the date of birth recorded in the Matriculation Certificate, bearing No. 47297 dated 1.10.1961 and arrears of salary should be paid within a period of three months from the date of receipt/production of a copy of this order.

9. This application is, accordingly, allowed. No cost. The original Service Book is returned to the State Counsel and the Matriculation Certificate to the counsel for the petitioner.