

(2003) 03 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 12967 of 2002

Ram Chandra Singh @ Ram Chandra Pd. Singh	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Citation : (2003) 2 PLJR 744

Hon'ble Judges : Shashank Kr. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shashank Kr. Singh, J.—Heard the parties.

2. The present writ application was initially filed to quash the order dated 24.9.2002, as contained in Annexure-1, by which the Petitioner has been dismissed from service with immediate effect and all the admitted amounts paid to the Petitioner as salary have been directed to be recovered, as after enquiry it has been established that the Petitioner has used forged and fabricated documents at the time of his appointment to show his date of birth as 1.10.1948. Subsequently after verification it would transpire from the Matriculation certificate of the Petitioner that his date of birth was 1.10.1944. It is manifest that if the Matriculation certificate is produced by the Petitioner at the time of his appointment, he would not have been appointed, as he had already become overage.

3. During the course of argument, the Petitioner has modified his prayer to the extent that if the date given in the Matriculation certificate had been there, the petitioner could not have entered the service and as such, he is not challenging the order, so far it relates to his dismissal from service after enquiry but the other part of the order which directs for recovery of the salary paid to the Petitioner during the period he was in service and has worked, has only been assailed.

4. The contention on behalf of the Petitioner is that it is not in dispute that the Petitioner had duly been appointed and had been discharging his duty and the salary was being paid to him on regular basis. No such allegation is there either in the impugned order or in the averments of the Respondents, who have filed counter-affidavit.

5. This Court in view of these admitted facts has no hesitation in allowing the limited claim of the Petitioner, as it is not in dispute that he has not discharged his duties and as no prayer has been made for payment of any amount for a period the Petitioner had worked in view of fake and fabricated documents but the prayer was otherwise, i.e., the amount, which has already been paid to him as salary for the period he has worked, the recovery of the said amount be stayed.

6. Learned Counsel for the State, on the other hand, has vehemently opposed the said prayer and said that as the aforesaid amount has been earned through a means, i.e., entering the service by giving a false affidavit regarding his age, as such, anything, which has accrued to the Petitioner by way of his salary has to be recovered and, therefore, Annexure-1 should not be interfered with.

7. In support of his contention, learned Counsel for the Petitioner has relied upon a order dt. 12.7.98 of this Court in C.W.J.C. No. 8140/97, wherein a Bench of this Court relying on the judgment of the Supreme Court in the case of Radha Krishan v. Union of India and Ors. vide SLP No. 3721/97 dated 28th February, 1997 came to the conclusion that the direction of the State that the salary paid to the Petitioner, who was more or less similarly situated to be recovered from his pensionary benefit, which has accrued to him, was not interfered with.

8. This Court agreeing with the aforesaid proposition also holds that if any pensionary benefit accrues to the Petitioner, the State is at liberty to recover the salary paid to the Petitioner from the same but beyond that no recovery can be made from the Petitioner.

9. In the result, Annexure-1 is modified to the extent stated above and this application is, accordingly, allowed to the extent indicated above.