(2006) 08 PAT CK 0048

In the Patna High Court

Case No : C.W.J.C. No. 7446 of 2005

Ram Nath Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Bihar Financial Rules — Rule 233, 97(1), 97(2)
Miscellaneous Rules of the Board of Revenue, Bihar, 1958 — Rule 233

Citation : (2007) PLJR 1065 Supp

Hon'ble Judges : Ramesh Kumar Dutta, J

Bench : Single Bench

Advocate : Ram Hriday Prasad, for the Appellant; J.C. to A.A.G, III, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kumar Dutta, J.—Heard Mr. Ram Hriday Prasad, learned Advocate for the petitioner and the learned J.C. to Addl. A.G.III for the State.

2. The petitioner is aggrieved by the action of the respondents in retiring him on 31.1.2005 and seeks a direction that his date of retirement should be treated as 30th June, 2005.

3. The petitioner was appointed as Constable in B.M.P. - 10, Patna on 1.2.1968. It is stated by the petitioner that he had given only the year of his birth as 1947 at the time of Joining and the same was also recorded in his Service Book. However from a perusal of the Service Book it appears that in the column of date of birth it has been mentioned 21 years and then ''1947'' is mentioned within brackets. Learned Counsel for the petitioner submits that subsequently in the state seniority List of 2002 (Annexure-2)only the year of birth of the petitioner as 1947 was mentioned in the column relating to the date of birth. It is further submitted that in the identity Card (Annexure-3) also only the year 1947 as year of birth has been mentioned. Learned Counsel also points out Annexure-4 which is an intimation to the petitioner, among others that he was to superannuate on

30.6.2005 and in column of date or birth there is only year of birth as 1947. Subsequently by Memo No. 839 dated 31.3.2004 a Notification was issued in which the petitioner''s age on the basis of his Service Book was shown as 21 years 1947 and the date of superannuation was changed to 31.1.05 on the basis of Rule 97(2) of the Bihar Financial Rules. Learned Counsel for the petitioner relies upon the case of Baban Singh v. The State of Bihar and Ors. 2006 (1) PLJR 201 wherein it lies been laid down by this Court that the petitioner of that case was liable to be superannuated only on 30.6.2005 and not on; 31.1.05.

4. From a perusal of the facts of the said case it is evident that the said Baban Singh has also been appointed on 1.2.1968 and in his service book also there is entry of 21 years and 1947 in the date of birth column. On a consideration of the facts and law this Court came to the conclusion that the case of he said Baban Singh was squarely covered by Rule 97(1) of the Bihar financial Rules as well as Rule 233(iii) of the Bihar Board''s financial Rules and not by Rule 97(2) of the Bihar Financial Rules.

5. Learned Counsel for the State was unable to distinguish the present case from that of Baban Singh. The only contention raised was that there is nothing in the said order in the case of Baban Singh that this year 1947 was mentioned within brackets which is the position as per the service book of the petitioner.

6. On a consideration of the trail submissions and the facts and circumstances I am of the view that the present case is fully covered by the Judgment in Baban Singh''s case (Supra) and the petitioner is accordingly also entitled for the same relief i.e. his date of birth has to be treated as mentioned in his service book as the year 1947, and accordingly he would be liable to be superannuated on 30.6.05 in terms of Rule 97(1) of the Bihar Financial Rules as per the earlier decision of the authority. However since by Resolution dated 24.3.05 the State Government has raised the age of superannuation to 60 years from 53 years, therefore, the benefit of the said increase in retirement age must be given to the petitioner also and He could, thus, now retire on 30th of June, 2007.

7. Accordingly Memo No. 839 dated 31.3.2004 (Annexure-5) is quashed and the respondents are directed to treat the date of retirement of the petitioner on the basis of Rule 97(1) of the Bihar Financial Rules read with Rule 233(iii) of the Bihar Board''s Miscellaneous Rules,1958 as 30.6.2007. The petitioner shall be reinstated in service forthwith and would be entitled to all consequential benefits including the salary for the period he had been Kept out from service.

8. The writ petition is accordingly allowed with the aforesaid directions.

