
(2012) 02 PAT CK 0035
In the Patna High Court
Case No : CWJC No. 1576 of 2012

Ram Pravesh Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Citation : (2012) 3 PLJR 1

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Shashi Bhushan Kumar Mangalam, for the Appellant; Dinbandhu Singh, for the Respondent

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner and the State. I.A. No. 543 of 2012 has been filed questioning the order dated 18.1.2012 passed during pendency of the writ application that the petitioner stood superannuated with effect from 30.6.2010 reckoning his date of birth as 28.6.1950.

2. Considering that it is a development taken place during the pendency of the writ application, and a sequel to the original order preventing him from working and stopping payment of salary, it is considered proper to allow the application so that the controversy be brought to finality.

3. The petitioner was appointed as a Jeep Driver in the work charged establishment on 27.6.1983. The original challenge was to the order dated 25.11.2011 directing stoppage of his salary and direction not to take work pending determination of his date of birth.

4. It is submitted that at the time of his entry in service the Medical Officer, Sadar Hospital at Madhubani by certificate dated 28.6.1963 assessed his age as 30 years. The Service Book opened on 29.11.1983 mentioned his date of birth as 28.6.1953 in English numeric as also in words in Hindi. At the time of consideration for grant of ACP also his date of birth was mentioned as 28.6.1953. On regularisation a fresh Service Book opened on 31.12.1991 recorded the same

date of birth in like manner. Years later on 30.12.2009 the petitioner was given a show cause notice that there appeared erasing and rewriting of the date of birth in the Service Book. He was called upon to submit proof of date of birth for comparison with that mentioned in the Service Book. The petitioner replied on 13.2.2010 that he had submitted his original birth certificate at the time of appointment and which was never returned to him. The respondents held an enquiry by constituting a committee. The petitioner was given no opportunity to participate in the deliberations of the committee. No copy of the report of the committee was given to him. He is unaware in what manner the committee arrived at the determination that his date of birth was 28.6.1953. He has been prejudiced by such determination of his date of birth behind his back with no opportunity to defend his service otherwise till 28.6.2013. The petitioner was asked to furnish his Driving Licence by a letter dated 15.11.2011. He appeared on the scheduled date but the committee did not sit. He therefore showed his original Driving Licence to Shri Suresh Sharma, Assistant Engineer. The primary thrust of the submission was with regard to gross infirmity in the decision making process.

5. Counsel for the State opposes the application to submit that the date of birth appears to be a disputed question of fact. The petitioner has been given a show cause notice. He has submitted his reply which has been duly considered but has not been found to the satisfaction of the authorities. The Court may therefore not interfere especially when superannuation has already taken effect from 30.6.2010.

6. Learned counsel for the petitioner has produced the original Driving Licence of the petitioner at the request of the Court. It has been issued by the Motor Transport Officer, Darbhanga, on dated 24.7.1981 bearing no. 203/81 under the Motor Vehicles Act, 1939. Section 4 of the Act states that no person under the age of 18 years shall drive a motor vehicle in any public place. The application form for grant of licence is provided for in Form-A of the first schedule. Part-II at item 4 requires the applicant to disclose his age on the date of the application. Even if the licence furnished to him does not mention his age, the petitioner undoubtedly mentioned his age on the date of application. Such disclosure must have been on basis of materials to the satisfaction of the licensing authority that he was above 18 years of age. Without such disclosure the law prohibited issuance of a driving licence to him.

7. Thus when the petitioner joined service as "a driver two years later on 27.6.1983 he was aware of his date of birth based on the disclosure made by him when he applied for the Driving Licence. There was no occasion for any medical assessment of his age by the Medical Officer of 28.6.1983 unless the petitioner considered it detrimental to his interest in making such disclosure. This inconsistency in his conduct remains undisclosed in his pleadings much less does he take any stand with regard to the same before the authorities. It has to be a subject of enquiry also from his original application before the Motor Transport

Officer at Darbhanga, what was the disclosure made by him in his application form for his date of birth.

8. The medical certificate dated 28.6.1983 to the naked eye reveals that it has been corrected to read as 30 from 33 by overwriting subsequently confirmed in words.

9. His Service Book was opened on 29.11.1983 mentioning his date of birth as 28.6.1953. The petitioner on 28.6.1983 required medical assessment of his age. But six months later when Service Book was being opened he suddenly became aware of his date of birth. Learned Counsel for the petitioner attempted to persuade the Court that this was an approximate entry based on the medical certificate.

10. The respondents issued him a show cause notice requiring him to produce the original Driving Licence. This was perhaps the best opportunity for him to demonstrate his bona fides. The explanation given by him with regard to the production of the Driving Licence is hardly acceptable.

11. If, as contended by him in his reply dated 13.2.2010, he had furnished the original documentary evidence with regard to his date of birth at the time of appointment on 27.6.1983, there was no occasion for a medical assessment of his age on 28.6.1983. It is apparent that serious disputed questions of fact are arising with regard to his date of birth.

12. Having said so the Court must also notice the contention of the petitioner that he was never associated with the enquiry committee which determined his date of birth as 28.6.1950. He is not aware on what basis that assessment has been made. What were the materials considered by the committee and the reasons for such conclusion. Counsel for the petitioner is correct in his submission that he was required to be associated with the deliberations by the committee with an opportunity to defend himself. At least, the report of the committee should have been furnished to him.

13. The allegations are for erasing the entries in the service book and overwriting. The show cause notice and the orders of the respondents do not contain any recital that the original Service Book was shown to the petitioner and queries made with regard to such erasing and overwriting. The respondents may be correct. But at this stage the Court is concerned more with the decision making process than the decision itself.

14. In the entirety of the discussion, the Court is not left satisfied with the contentions raised on behalf of the petitioner and neither is it satisfied with the manner of the decision making process adopted by the respondents.

15. It is therefore not possible for the Court in any manner to hold in favour of the petitioner even while directing a fresh decision to be taken in accordance with law by the directing his reinstatement in the meantime. That relief shall necessarily remain dependant upon the final decision that may be arrived at after

proper consideration in accordance with law and discussion on all relevant materials as noticed in the present order.

16. It is not that the petitioner is seeking correction of his date of birth, but it is the respondents who question his date of birth. The matter is remanded to, the respondents to proceed afresh in accordance with law for determination of his date of birth in light of the discussion contained in the present order and pass a fresh reasoned and considered order preferably within a maximum period of three months from the date of receipt and/or presentation of a copy of this order provided the petitioner himself cooperates.

17. Further course of conduct required by the authorities shall remain dependant on such fresh decision. If circumstances so warrant the impugned order dated 18.1.2012 shall not be any impediment in passing such fresh orders. The Court for technical reason refrains from setting aside the order dated 18.1.2012 at this stage satisfied that even the petitioner has not been able to convince the Court to hold in his favour.

18. The enquiry report has then to be taken to its logical conclusion. The writ application stands disposed.