
(2008) 09 JH CK 0085
In the Jharkhand High Court

Ramjeet Prasad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Citation : (2008) 09 JH CK 0085

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for a writ in the nature of certiorari for quashing the impugned letter No. Q-376/Pt/45 at JSR dated 24.09.2005, issued by the Respondent No. 3, whereby the petitioner has been informed that he would be retiring from service with effect from 31.08.2006 and calling upon him to submit his Pension papers, although, according to the petitioner, he would be completing the age of retirement of 60 years, according to his date of birth, on 02.08.2010.

2. Earlier the petitioner had filed his application before the Central Administrative Tribunal, Patna Bench, Patna Circuit Bench at Ranchi vide O.A. No. 131 of 2006. His application was, however, dismissed as withdrawn on 24.08.2006 with a liberty to approach the appropriate forum for redressal of his grievance.

3. The case of the petitioner in brief is that he has joined his service under the Indian Posts and Telegraph Department as Line Man on 18.06.1970. At the time of his initial appointment, he had declared his date of birth as 02.08.1950 based on the School Transfer Certificate of Class-VIII, which was issued by the concerned School, namely, Moni Baba High School, Baghi, Sahabad, Bhojpur now known as High School, Baghi, District-Bhojpur. The above date of birth was entered in the service records of the petitioner and the identity-card, issued to him also records his date of birth as 02.08.1950. A Fresh Identity-card was issued to him, subsequently on his promotion to the post of Senior T.O.A. (G),

maintaining the same date of birth, i.e. 02.08.1950. On his subsequent promotion, as S.S. (O), he was again issued a fresh Identity card bearing the same date of birth.

In the year 1982 a controversy arose regarding the genuineness of the petitioner's date of birth. An enquiry was conducted by the Respondent-authorities in course of which, the School authorities were also enquired and confirmation letter was obtained from them dated 07.08.1982 to the effect that the date of birth of the petitioner as entered in the School records was 02.08.1950. The above fact, obtained in course of enquiry, was also communicated to the petitioner by the Divisional Engineer, Telecommunication, Jamshedpur Division, Jamshedpur vide letter dated 12.10.1982 (Annexure-8).

4. The grievance of the petitioner is that even though after thorough enquiry, the petitioner's date of birth was confirmed as 02.08.1950 and all doubts in this regard were put to rest. Yet, the Respondent authorities by the impugned letter had declared that the petitioner would retire on 31.08.2006. The contention of the petitioner is that the effect of the impugned letter is premature termination of the services of the petitioner, which visits the petitioner with civil consequences and such decision of the Respondents cannot be taken without issuing a show cause notice to the petitioner and without affording an opportunity to the petitioner to explain.

5. Mr. Bhanu Kumar, learned Counsel for the petitioner submits that if the matter was finally resolved and settled pursuant to the enquiry conducted in the year 1982, there could be no occasion for the Respondents to raise any further doubt regarding the genuineness of the petitioner's date of birth as entered in the service records. If, still any doubt persists, then the petitioner ought to have been given an opportunity to explain and he should have been referred to the competent Medical Board promptly. Learned Counsel argues further that the Respondents have deliberately wrecked an imaginary dispute relating to the petitioner's date of birth at a belated stage, which is at the fag end of the petitioner's service and such act on the part of the Respondents cannot be allowed. Learned Counsel refers to and relies upon, in this context to a judgment of this Court in the case of Gorakh Nath Upadhyay Vs. Jharkhand State Electricity Board and Others, .

6. Counter affidavit has been filed on behalf of the Respondents, stating, therein, that as per the departmental records, the date of birth of the petitioner is 02.08.1946 and the same was tampered in the service book in order to appear as "02.08.1950". It is sought to be explained that from perusal of the front page of the Service Book, it also transpires to be tampered as passed "Matric passed" scoring over entry "VII Standard passed", without there being any signature of the competent authority and without attestation. It is further slated that the petitioner was asked to submit his Matriculation certificate (if passed) to the competent authority for verification of his date of birth vide letter dated 02.03.2000. However, when even after several reminders, the certificate bearing

date of birth issued by the Examination Board, Patna (if any) was not submitted, it has to be presumed that the petitioner has attained the age of 60 years and, therefore, he was superannuated with effect from 31.08.2006. It is also stated that the Vigilance Officer of the Respondents' Department had conducted the enquiry and the Enquiry Report discloses that the date of birth, "02.08.1950", as claimed by the petitioner, does not seem to be authentic. It is sought to be explained further that the dispute of date of birth arose some time in the year 1982 and since then, the petitioner was given full opportunity to substantiate the changes made in the Service Book regarding his date of birth. In response, the petitioner had submitted the photo-copies of two different certificates and in spite of several reminders, the original was not produced for rectification. On a third time, another certificate purported to be the original certificate, was produced, which was entirely different from the certificates submitted earlier by him.

7. A copy of the purported Vigilance Enquiry Report is filed by the Respondent, as Annexure-C. On perusal of this Report, it transpires that three separate certificates were submitted by the petitioner. It is sought to be explained by the petitioner that the petitioner's date of birth is 02.08.1950. But copies of the School Leaving Certificate, were issued to him each time when it was demanded on different dates. These certificates have been refused to be acknowledged only on the ground that the certificates bears different dates of issue. It is explained that the documents are the copies of the School Leaving Certificate of the petitioner, issued by the School authorities on different dates when the same was applied for by the petitioner and merely because the date of issuance of the certificates differ from each other, it cannot be said by any stretch of imagination that the documents are not genuine.

8. Learned Counsel explains further that the petitioner had never declared himself that he had passed matriculation examination. Rather, his original declaration was that he had passed VIIth Class. It is also argued that even otherwise, the Service records are preserved and maintained essentially by the Respondents themselves and the petitioner could have no occasion to have access to the same for indulging in any act of tampering.

9. As rightly pointed out by the learned Counsel for the petitioner, the Services records are exclusively maintained by the Respondents and in absence of any suggestion that the petitioner could have any opportunity of access to the service records, the petitioner cannot be blamed for any alleged interpolations in the service records. Even otherwise, from the service records, a copy of which has been annexed to the counter affidavit as Annexure A, it appears that the same was prepared on 29.08.1970. In the column of "Educational Qualifications", it has been mentioned as "Passed VII Standard". It appears that above the word "VII", the word "Matric" has been noted apparently in a different hand. Since the documents are presumed to be in exclusive custody of the Respondents, it is for them to explain as to how the insertion of the word "Matric" has been made in

the service record.

10. From the facts stated, admittedly, the petitioner had declared himself as "VII Passed" and he had made such declaration even at the time of his initial appointment and on demand, he had submitted the School Leaving Certificate, which was found true by the Respondent-authorities in the enquiry conducted by them. This was sufficient compliance on the part of the petitioner to submit the requisite documents in support of his claim that his date of birth was 02.08.1950. Significantly, no other date of birth appears in Annexure-A, except the date 02.08.1950.

11. If in spite of such documents produced by the petitioner and the earlier enquiry conducted in the year 1982 by verification from the School authorities, any further doubt did persist regarding the petitioner's date of birth, it was the duty of the Respondents to issue a show cause notice to the petitioner affording him an opportunity to explain. Though a dispute relating to date of birth cannot be adjudicated upon by the writ Court but it is a settled principle of law that the writ Court can stop arbitrary action of the employer.

12. In the present case, as observed above, it prima facie appears that the petitioner's date of birth in the service records (Annexure-A) was entered as 02.08.1950. No other date of birth finds a mention in Annexure-A to the counter affidavit. The School Leaving Certificate produced by the petitioner though bearing different dates of issue, consistently maintained at the School Admission Register, was 02.08.1950. This fact was admittedly supported by the Headmaster of the School where the petitioner had last studied and confirmation to this effect was communicated by the concerned Office of the Respondent to the petitioner by his Letter dated 12.10.1982. Merely, because some overwriting appears in the service records (Annexure-A), and the same not being attributed to any acts of the petitioner, there does not appear any genuine and bona fide doubt, regarding the date of birth entered in the service records of the petitioner as 02.08.1950. The action of the Respondents in refusing to acknowledge the documents furnished by the petitioner in support of his claim is based on misconceived grounds. Furthermore, the unilateral action of the Respondents to declare that the petitioner's date of birth is something other than as what has been recorded in the Service record, that too without issuing any show cause notice to the petitioner and affording him an opportunity to explain, is wholly illegal and violative of the principles of natural justice and cannot be allowed to sustain.

13. For the aforesaid reasons, this writ application is allowed and the impugned order of superannuation is hereby quashed. It is declared that the petitioner shall be deemed to be in service till the date he attains the age of 60 years, reckoning his date of birth recorded as 02.08.1950 and he shall be entitled to the salary and wages till the date he attains the age of superannuation according to such computation.