
(2007) 07 PAT CK 0065
In the Patna High Court
Case No : CWJC No. 13260 of 2004

Sagir Ahmad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Citation : (2007) 4 PLJR 503

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Umakant Shukla, for the Appellant; C.N. Sinha and M.K. Singh for the State, for the Respondent

Judgement

Mihir Kr. Jha, J.—Heard learned counsel for the parties. In this writ application the petitioner has challenged the order dated 28.1.2002, as contained in Annexure-1 to the writ application.

2. By the said order the Officer-in-charge of Turkaulia Police Station has informed the petitioner that he ought to have retired from on 31.12.1999 in view of the fact that the Verification Committee had ascertained his age on 12.11.1990 to be 48 years as on 31.12.1989. The grievance of the petitioner is that such report of the Committee having been not confronted to him and he having been given no opportunity to explain his case, the resultant impugned order is patently illegal and in violation of the principle of natural justice.

3. The petitioner further contends that his date of retirement ought to have been 31.3.2002 as per his own declaration and therefore, he should not have been deprived of working on the post of Dafadar in Turkaulia Police Station on the strength of the impugned order.

4. On the other hand, the respondents have filed a counter-affidavit stating therein that the age of petitioner determined to be 48 years on 31.12.1989 by the Verification Committee and as such, he was made to retire on 31.12.1999 upon reaching the age of 58 years. The respondents however have not enclosed

the report of such Verification Committee in the counter-affidavit nor a copy of the same was made available to the petitioner at any point of time.

5. This Court does not find any justification in this unilateral decision arrived at by the authority without giving any opportunity to the petitioner and/or without referring the matter to the Medical Board. It is well known that determination of actual age can only be done by Ossification Test and that having been not done by the Verification Committee in the year 1990, the fixation of age by the Verification Committee can have no value in the eye of law.

6. In that view of the matter, the determination of age of the petitioner as 48 years on 31.12.1989 is held to be illegal and this part of the order is set aside.

7. There is yet another issue in this case i.e. admissibility of pension of the petitioner. The payment of pension will depend only on the determination of correct age because in case the petitioner is held to be of 58 years as on 31.12.1999, he will not complete the period of 10 years which is the minimum prescribed qualifying period for grant of pension under Bihar Pension Rules. In such a situation, when a valuable right of the petitioner to earn his pension is involved, the authority to show that he could have superannuated on completing 58 years in the month of March, 2002.

8. Accordingly this court directs the authority to refer the case of the petitioner to the Medical Board consisting of experts of Forensic Science, Medicine and Radiology of Patna Medical College Hospital, who would conduct Ossification Test of the petitioner and determine his present age. Such report of the Medical Board will be binding on both the parties and on the basis of the findings in the report it will be decided as to whether the petitioner could have superannuated on 31.12.1999 or on any other date? Such date of retirement of the petitioner however could be only on any date prior to 31.12.2002 as the petitioner himself claims and asserts that he had to superannuate with effect from 31.12.2002.

9. Such determination of age of the petitioner by the Medical Board must be made within six months from today and the consequential admissible post retirement benefit, if any, must be settled within three months thereafter.

10. There is yet another aspect to which my attention has been drawn by the learned counsel for the petitioner. This relates to recovery of the amount of the salary which was paid to him in between 31.12.1999 to January, 2002. It goes without saying that petitioner was not responsible in continuing in service on his own nor any finding to this effect has been recorded in the impugned order. The petitioner has worked for the period between January, 1999 to January, 2002. As such, he cannot be deprived of the salary for the period aforesaid and thus cannot be made liable to refund the amount of salary also received by him in lieu of work due.

11. With regard to the last issue the petitioner states that he is also entitled for payment of salary for the period from September, 2001 to January, 2002 during

which he had admittedly worked. The authority concerned will verify whether the petitioner had worked for the period from September, 2001 to January, 2002. In case, it is found that the petitioner had worked for the period aforesaid and was not paid his salary, the authority concerned will be under obligation to pay the same within a period of three months from the date of receipt/production of a copy of this order. This writ application is thus disposed of in the light of aforementioned observations and directions.