(1970) 04 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No. 462 of 1968

Shri S.K. Bhattacharya — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 24-04-1970

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1970) 04 PAT CK 0005

Hon'ble Judges : U.N. Sinha, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : B.C. Ghose, N.N. Roy, N.N. Mukherjee, Sanat Kumar Chattopadhya and Sarojendu Mukherji, for the Appellant; Shreenath Singh, for the Respondent

Judgement

U.N. Sinha, J.—This application has been filed by the petitioner under Articles 226 and 227 of the Constitution of India, praying that the order of the Assistant Accountant General of Bihar dated the 23rd March, 1968, (Annexure 7) may be quashed. By that order the petitioner had been informed that he was due to superannuate on the 17th July, 1968. The present writ application was filed on the 8th July, 1968 and it was admitted on the 9th July, 1968. During the pendency of the writ application it had been submitted on behalf of the State of Bihar that the final order of the Government on the question of the date of birth of the petitioner could not be issued because of the pendency of the writ application in this Court and because of the nature of the ad interim order passed therein, directing that the respondents were forbidden to effect the petitioner''s retirement from service. By order passed on the 4th October, 1969 this Court had mentioned these facts and a clarification had been made to the effect that the State Government was not prohibited from passing its final order in this connection. Thereafter, it appears that the State Government passed its order on the 14th November, 1969 with respect to the recognised date of birth of the petitioner and a copy of this order was filed on the 18th November, 1969 as Annexure J. Thereafter, the petitioner filed a rejoinder, adding a prayer to the effect that the communication of the Government of Bihar given as Annexure J was illegal, contrary to law and rules and principles of natural justice and it was fit to be quashed. The following is the substance of the controversy raised in this case. According to the petitioner, he was born on the 1st September, 1913, although according to the matriculation certificate, his date of birth was 1st September, 1911. According to the Accountant-General, Bihar, Annexure 7 was based on the record of his office, showing that the petitioner''s date of birth was 12th July, 1910, Government has now decided that the petitioner''s date of birth was 1st September, 1911, as disclosed by his matriculation certificate. By Annexure J the State Government had, therefore, asked the Accountant General, Bihar to correct its record accordingly. That is to say, according to the petitioner, he will superannuate on the 31st August 1971 (on the basis of his date of birth being 1st September, 1913) whereas according to the latest decision of the State Government, the petitioner superannuated on the 31st August, 1969 (on the basis of his date of birth being 1st September, 1911).

2. Now I shall give the relevant facts arising in the case. It is stated in the writ application that the petitioner was appointed as a non-Gazetted permanent first grade Estimator on the 31st March, 1942. At that time and for this appointment the petitioner had submitted an affidavit sworn by his father before a First Class Magistrate, Ranchi on the 19th March, 1940, stating that the date of the petitioner''s birth was 18th Bhadra 1320 (Bengali year), which would correspond to the 1st September, 1913. It was mentioned in the affidavit that the statement of age as recorded in the Metric Certificate was due to inadvertent mistake. In due course, the petitioner was appointed as an Assistant Engineer under the State Government on the 9th November, 1946. He had continued in that post upto the 17th October, 1948, when he was appointed as an Assistant Professor, Civil Engineering, Bihar College of Engineering, patna, which post he held till the 1st January, 1952. The petitioner was thereafter transferred to Muzaffarpur as an Assistant Professor in Civil Engineering and was subsequently promoted in 1953 as an Associate Professor. He was later on promoted as a Professor of Civil Engineering in Muzaffarpur Institute of Technology, by notification dated the 18th September, 1959, which post the petitioner was holding at the time when the writ application was filed. It is stated that the petitioner''s date of birth as 1st September, 1913 had been accepted by the State Government and it was so published in every issue of Bihar Civil List since 1953. It is stated that in February, 1958, when the petitioner went to Canada for training under the Colombo Plan, the petitioner''s age in February, 1958 was shown as 44 years 5 months.

3. On behalf of the State of Bihar a counter-affidavit and two supplementary affidavits have been filed. The main points mentioned therein are as follows:

It is stated that the Department of the Director of Technical Education, Government of Bihar has no information about the petitioner''s father''s affidavit, mentioned in the writ application. It is alleged that the petitioner''s date of birth, which could be gathered from the documents in connection with the training under the Colombo Plan was based on the information given by the petitioner himself. The documents had been forwarded to the Government of India on the presumption that the particulars had been correctly filled up. It is stated that the service book of the petitioner is maintained in the Accountant General''s Office and the date of birth can be verified only by making a reference to the Accountant-General. It is alleged that the State Government had come to the conclusion as to the petitioner''s date of birth from his matriculation certificate. In the first supplementary affidavit it has been added that the petitioner''s date of birth shown in the Civil List of 1953 as 1st September, 1913 must have been recorded on the information furnished by the petitioner himself. The second supplementary affidavit has merely applied Annexure J. A counter-affidavit has also been filed on behalf of the Accountant-General, Bihar. It is mentioned therein that the date of petitioner''s birth as per record of the office of the Accountant-General is 12th July, 1910; but it is mentioned that the original letter on the basis of which this date of birth was noted is not available at present, as the case relates to a period exceeding the limit of preservation of such records.

4. The result of the facts and circumstances mentioned above indicates that until this controversy bad arisen the petitioner''s date of birth bad been taken to be the 1st September 1913 as indicated in the Civil List. No doubt the records of the Accountant-General showed the petitioners date of birth to have been 12th July, 1910, but there is no material on record for accepting this to be the petitioner''s date of birth, and in any event, the State Government has proceeded on the footing of the petitioner''s matriculation certificate and not on the entry made in the records of the Accountant-General''s office. The petitioner has appended Annexure 1 to the writ application which has been described as the paper in connection with the petitioner''s going abroad on the Colombo Plan. That document, which bad been signed by the Principal, Muzaffarpur Institute of Technology on the 21st February, 1958, had stated the petitioner''s age then was 44 years 5 months That will take his date of birth to sometime in September, 1913. Admittedly this document had been forwarded by the State Government and it is obvious that the petitioner was under the impression that his date of birth as 1st September 1913 had become acceptable since his father had filed his affidavit dated the 19th March, 1940. As indicated by Annexure 4/1, the petitioner had insisted on the 1st August, 1961 that his date of birth was 1st September, 1913. This annexure was an information from the petitioner to the Principal, Muzaffarpur Institute of Technology. So far as Annexure 7, dated the 23rd March, 1968 is concerned the statement made therein to the effect that the petitioner was due to superannuate on the 12th July, 1968 is no longer tenable as no records are forthcoming to show how the petitioner''s date of birth had been recorded in the office of the Accountant-General as 12th July, 1910. It may be added that the petitioner''s service book has not been produced. Another important fact may be stated arising from the third supplementary affidavit filed by the petitioner. It is stated therein that on the 20th December 1969 the State of Bihar had filed a document in the Court of the Munsif 1st Court, Muzaffarpur,

in Title Suit No. 228 of 1969, in which the petitioner''s date of birth had been shown as 1st September, 1913. A copy of this document has been annexed as Annexure 13 to this supplementary affidavit.

It is difficult to understand how the State Government now insists that the petitioner''s date of birth must have been 1st September 1911, only on the basis of the petitioner''s matriculation certificate. Reference has been made by learned counsel for State of Bihar to Annexure H dated the 17th November 1945, appended to a supplementary affidavit filed on behalf of the State which stated that the petitioner was then aged about 34 years. This was a communication from the Joint Public Service Commission, Bihar to the Government of Bihar. But, curiously enough, Annexure I-1, a communication from the Bihar Public Service Commission to the Deputy Director of Technical Education, Bihar, dated the 23rd May, 1969 had mentioned that the original application of the petitioner had been sent to the Secretary to the Government of Bihar, Development and Employment Department, Patna along with Public Service Commission''s letter dated the 17th November, 1945, a copy of which is Annexure H. That letter of the Public Service Commission has been produced but the or original application of the petitioner is not forthcoming. Therefore, on Annexures H and I-1 it is difficult to conclude that the petitioner''s date of birth was in 1911 and not in 1913. The details of the entries in the Civil List have been mentioned in Paragraph 14 of the writ application, indicating that the petitioner''s date of birth was entered in the Civil List as the 1st September, 1913 from 1953 to 1966 (both years inclusive). In the circumstances, it is difficult to hold that the State Government was right in concluding the petitioner must have been born on the 1st September, 1911, only from his matriculation certificate.

The petitioner is, therefore, entitled to the main relief claimed by him. That is to say, the petitioner''s date of birth must be taken to be 1st September, 1913. In consequence, Annexure J becomes ineffective and so does Annexure 14, the last communication from the Accountant-General, Bihar to the petitioner, dated the 19th January, 1970, which has followed Annexure J, the State Government''s communication to the Accountant-General, Bihar, dated 14th November, 1969. It must therefore, follow that the petitioner had not superannuated on the 31st August, 1969 and that his date of superannuation will be on the basis of his date of birth being the 1st September, 1913. The writ application is therefore, allowed, with directions given above. In the circumstances of the case, there will be no order for costs.

Kanhaiyaji, J.

I agree.