

(2000) 07 PAT CK 0052
In the Patna High Court
Case No : C.W.J.C. No. 8259 of 1999

Shyam Babu

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 BLJR 1955 : (2001) 2 PLJR 161

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—In this writ petition, the petitioner has assailed the validity of the order dated 25.6.1999, contained in Annexure-2, passed by the Deputy Administrator of the Patna Municipal Corporation. By the said order, 31.8.99 has been determined as the date of superannuation of the petitioner on the ground that he shall be completing 40 years of service in the Corporation on 9.8.1999.

2. In short, the relevant facts are that the petitioner entered in the service of the Corporation on 10.8.1959 and has been working as Driver-cum-Cinema Operator in the Head Office of the Corporation. It is claimed that his actual date of birth is 15.7.1943 which can be verified from the transfer certificate issued by the Headmaster of Rajkiya Madhya Vidyalaya Kewra Patna. It is also stated that in the service book his date of birth is recorded as 15.7.1943. A copy of the School Transfer Certificate has been annexed as Annexure-1, which was issued on 5.1.1982, i.e., much after the entry of the petitioner in service.

3. A counter-affidavit has been filed on behalf of respondent Nos. 2 and 3, in which it is admitted that the petitioner was engaged in the service of the Corporation on 10.8.1959 and that 15.7.1943 is recorded as his date of birth in the service book. However, it is stated that the State Government, vide its letter contained in Memo No. 1974 dated 28.5.1991 issued instructions for effecting

retirement of the employees who completed 40 years of their service and in compliance of the same, the Administrator of the Corporation issued letter No. 193/C dated 4.8.1992 directing for full and immediate compliance of the said instructions, meaning thereby to retire all such employees who had completed 40 years of their service. It is stated that the issue of compulsory retirement on abovesaid Government instructions came up for consideration in C.W.J.C. No. 8067 of 1992 and a Division Bench of this Court, vide its order dated 17.11.1992 (Annexure-B), dismissed the writ application. Their further case in the counter-affidavit is that the minimum age for appointment under the statutory provisions, namely, Patna Municipal Corporation Officers and Servants (Appointment, Duties, Discipline and Appeal) Rules, 1955 is 18 years and, therefore, the petitioner has rightly been superannuated on completion of 40 years of service on 9.8.1999 counting 58 years of age with reference to the minimum age for treating him eligible on the date of his initial appointment.

4. Learned Counsel for the petitioner has submitted that in view of the entry showing 15.7.1943 as the date of birth of the petitioner in the service record, the respondents had no jurisdiction to alter the same and superannuate him on completion of his 40 years of service, vide impugned order. It is submitted that under the Rules, the petitioner is entitled to continue in service till he attains the age of 58 years, which on the basis of the entry made in the service book should be 16.7.2000. As such, it is contended that the action of the respondents in superannuating the petitioner from the service of the Corporation with effect from 31.8.1999 on completion of 40 years of service on 9.8.1999 is wholly arbitrary and mala fide. Learned Counsel for the petitioner has also placed reliance on photocopy of the decision of this Court in the case of Bishwanath Singh v. State of Bihar and Ors. C.W.J.C. No. 444 of 1996, in which the order impugned was passed by the Administrator of Patna Municipal Corporation as also the decision of this Court in the case of Shaikh Lal Mohammad v. State of Bihar and Ors. 1995 (2) All PLR 441.

5. Learned Counsel appearing for the respondent-Corporation has submitted that the petitioner has produced two evidence in support of his claim that his date of birth is 15.7.1943; (i) transfer certificate issued by the Headmaster of the School (Annexure-1) and (ii) a photo copy of the service book. Both these documents would show that they were issued/prepared much after the petitioner entered in the service. It has been submitted that in case the entry of the date of birth made in the aforementioned two documents are correct, then at the time of initial appointment, the petitioner's age would be less than 18 years. Under Rule 4(b) of the rules a person attaining the age of 18 years alone was competent to be appointed. It was, thus, submitted that from the said facts the only conclusion would be that the petitioner got his appointment by playing fraud on the Corporation. It is well settled that fraud renders any order nullity. In this view of the matter, the petitioner is not entitled to get a relief which has been claimed in the present writ petition. Learned Counsel for the Corporation has also submitted that as the things were prevailing in various Government departments, Board

and Corporation the State Government issued instructions in the year 1990 keeping in view the minimum age prescribed for entry in service. As such, the Corporation also adopted the same and has been following the same in all cases. It is submitted that the validity of the action of the Corporation pursuant to the said Government instructions was challenged in this Court in C.W. J.C. No. 8067 of 1992 and the Division Bench, vide order dated 17.11.1992, declined to exercise discretionary jurisdiction and dismissed the writ petition relating to similar claim raised on behalf of the petitioner in the said case.

6. This Court finds substance in the submission of the learned Counsel for the Corporation. This Court finds it difficult to accept the entry made in the aforementioned two documents, which have been issued much after the entry of the petitioner in service. Obviously such entry was made for undue gain to continuance the petitioner in service for few years more. The petitioner was admittedly engaged in the service of the respondent-Corporation on 10.8.1959 and the Rule was framed in the year 1955, i.e., even before his appointment prescribing the minimum age for entry in the service. Thus, it has rightly been submitted by the learned Counsel for the respondent-Corporation that in case the said entry of the date of birth in two documents is accepted, then the conclusion would be that the petitioner was below the minimum age for appointment in the service of the Corporation at the time of his entry in service. Thus, obviously, a fraud has been played on the Corporation by the petitioner, which renders any order nullity.

7. The Division Bench of this Court in the case of Mangla Prasad v. State of Bihar and Ors. (supra) has, under similar circumstances considering the fact that the petitioner of the said case got appointment when he was minor and that he had completed 40 years of service, refused to exercise the discretion under Article 226 of the Constitution. In the case of Bishwanath Singh v. State of Bihar and Ors. (supra), there was no dispute about the date of birth of the petitioner and thus, the Court did not find any hesitation in holding that the decision impugned therein determining the age of superannuation on the basis of completion of 40 years of service of the petitioner of the said case was based on erroneous assumption. In the case of Shaikh Lal Mohammad v. State of Bihar and Ors. (supra) also, as there was no dispute about the date of birth of the petitioner of the said case and that no Rule had been brought to the notice of the Court, the Court declared that the petitioner should have superannuated in normal course on attaining the age of 58 years on the basis of the date of birth recorded in the service book.

8. Thus, in the facts and circumstances of the present case, none of the said decisions is of any help to the petitioner and the case of the petitioner is squarely Covered by the Division Bench decision of this Court in the case of Mangla Prasad v. State of Bihar and Ors. contained in Annexure-B to the counter-affidavit.

9. The writ application is, thus, dismissed, but without costs.