
(2003) 03 JH CK 0010

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5012 of 2002

Yadu Nandan Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 51 BLJR 742 : (2003) 2 JCR 398

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : K. Roy, for the Appellant; K. Shankar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioner against the orders, contained in Memo No. 1909 dated 29th May, 2002 and District Order No. 1105/2002 dated 24th June, 2002, whereby and whereunder, it was directed to recover the excess salary paid to the petitioner between 1st May, 2000 to 31st January, 2002, from his retiral benefits.

2. The brief fact of the case is that the petitioner was appointed as a Constable on 21st April, 1964 and retired on 31st January, 2002 from the post of Sub Inspector of Police.

After his retirement, when the respondents took up the matter for payment of his retiral benefits, it came to their notice that his date of birth was corrected as 1st April, 1944, vide Lohardaga District Order No. 542 of 1992 and on that basis, the petitioner was allowed to continue upto 31st January, 2002.

The DIG of Police, Human Rights, Jharkhand found that the correction of his date of birth was made after about 28 years of petitioner's service by the S.P., Lohardaga which was against the provisions of law. In this background, while he observed that the petitioner should have retired on about 30th April, 2000, ordered that the excess salary paid to him should be recovered by its letter No.

1909 dated 29th May, 2002. It followed by the consequential order issued by the S.R. Dhanbad, contained in District Order No. 1105/2002 for recovery of excess amount from the retiral benefits.

3. The ground taken by the respondents is that the date of birth can be changed within ten years from the date of appointment as per Rule 96 of the Bihar Financial Rules, 1950 read with Rule 1041(B) of the Bihar Police Manual. In this background, the change of date of birth made by the then S.P., Lohardaga, vide Lohardaga District Order No. 542 of 1992 has been held to be illegal.

4. It may be mentioned that the S.P., Dhanbad being an authority of equivalent rank had no jurisdiction to declare an order issued by the S.P., Lohardaga as illegal.

5. It is true that the date of birth is not changed normally, once a declaration is given by an employee. Rule 96 of the Bihar Financial Rules enjoins that the date of birth once recorded on the basis of Matriculation certificate/any other evidence, cannot be permitted to be changed. This provision has been reiterated under Rule 1041(B) of the Bihar Police Manual. However, a provision is made to apply within ten years in case of clerical mistake.

6. The question arises whether Rule 96 is strictly applicable in the case of the petitioner or not who was initially appointed as a Constable.

7. In the case of Ram Shobhit Rai v. State of Bihar 1989 BBCJ 141, the Court noticed that the Government of Bihar in the Home department issued a Circular dated 26th February, 1976. The said Circular stated, inter alia, that the Government noticed that the date of birth of the Police officials were wrongly recorded in their Service Books in the cases in which mass recruitments were made. It was also mentioned that the officials who possessed Matriculation certificates showing the date of birth, could apply within one year from the said Circular and get the wrong entry of the date of birth corrected.

Taking into consideration the afore said Government Circular and the fact that it was not widely circulated, it was made applicable to the Constables even those who applied much later for correction of date of birth on the basis of Matriculation certificate, if passed prior to entry in the Government service.

8. The Court noticed Rule 96 of the Bihar Financial Rules and different decisions of Patna High Court and held that in terms with the Circular dated 26th February, 1976, it is open to a person who was appointed as Constable to apply for correction of date of birth, if passed the Matriculation examination prior to the appointment.

9. In the case of the petitioner, it is admitted that he passed Matriculation examination in the year 1961 i.e. prior to his appointment as Constable on 21st April, 1964. It is also not in dispute that February, 1944 is the date of birth of petitioner as recorded in the Matriculation certificate.

In the aforesaid background, on petitioner's representation, even much after tent years, if the S.P., Lohardaga changed the date of birth as per Matriculation certificate, vide District Order No. 542 of 1998, there was no occasion for the respondents to reopen it after allowing the petitioner to continue upto 58 years on the basis of such date of birth, nor they could have reopened it after retirement at the time of payment of retiral benefits.

10. For the reasons aforesaid, the impugned orders, contained in Memo No. 1909 dated 29th May, 2002 issued by the DIG, Police, Human Rights, Jharkhand, Ranchi and District Order No. 1105 of 2002 dated 24th June, 2002 passed by the S.P., Dhanbad cannot be upheld. They are, accordingly, set aside.

11. The respondents are directed to pay the petitioner the retiral benefits treating 1st February, 2002 as the date of his retirement without any recovery within a period of three months from the date of receipt/production of a copy of this order.

12. In case, the admitted benefits are not paid within three months, they will be liable to pay interest @ 5% from the date of retirement.

13. The writ petition is allowed.