

(2000) 05 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 5729 of 1996

Yogendra Prasad Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-2000

Acts Referred:

Citation : (2001) 1 PLJR 624

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

Bench : Single Bench

Advocate : Subhro Sanyal, Sanjiv Kumar and R.N. Prasad, for the Appellant;
Ajay Kumar, for State and Shivendra Kishore, for Board, for the Respondent

Judgement

R.M. Prasad, J.—In this writ petition the Petitioner is aggrieved by the orders contained in Annexures 1, 2 and last part of Annexure 3, whereby and whereunder his claim for treating him 24 years of age on 10.6.1963 has been held to be illegal and so has been superannuated from retrospective date by treating his age as 30 years on 10.6.1963. Thus the dispute in this writ petition is as to whether on 10.6.1963 the age of the Petitioner was 30 years or 24 years.

2. It has been submitted by Mr. Sub-(sic) Sanyal, learned Counsel for the (sic) that the impugned orders are (sic) on the admitted fact that the (sic) of the Bihar State Electricity (sic) (for short "the Board") determined (sic) date of birth of the Petitioner as 30 (sic) on 10.6.1963 vide impugned order (sic) 2.4.1998 contained in Annexure 3 (sic) before holding any enquiry in com-(sic) violation of the principle of natural (sic) and fair play. It has further been (sic) by the learned Counsel for the (sic) that the age of the Petitioner (sic) 24 years on 10.6.1963 which is also (sic) from the photostat copy of the at-(sic) Service Book of the Petitioner (sic) has been annexed as Annexure 4 (sic) the list circulated by the Personnel (sic) of the Board on 9.1.1995 as con-(sic) in Annexure 6 with respect to the (sic) of retirement of various employees of the Board in between the year 1995 to 2000. In the said list (Annexure 6) the same of the Petitioner is included at serial No. 31, from which it would appear that (sic) Petitioner's date of birth

has been (sic) to be 10.6.1939 accepting his claim that he was 24 years of age on 10.6.1963 and consequently his date of (sic) has been mentioned as 20.6.1999. It is thus submitted that the Respondent-Board has committed grave (sic) in changing the date of retirement of (sic) Petitioner at the fag end of his service.

3. According to the learned Counsel the Petitioner as per Circular an employee cannot apply for change in the date of birth after lapse of 10 years which (sic) should be applied even in the case of the employer that they cannot change the date of birth in the Service Book at the fag end of his service.

4. Mr. Shivendra Kishore, learned Counsel for the Respondent-Board has submitted that there is no substance in he said submission of the learned Counsel for the Petitioner in absence of any dispute with respect to actual entry made in the original Service Book, photostat copy of which is contained in Annexure "A" to the counter affidavit filed on behalf of Respondent Nos. 2 and 3. It has been submitted that a bare perusal of Annexure "A" from the naked eyes shows that initially 30 years was recorded as the age of the Petitioner on 10.6.1963, which was later penned through and altered to 24 years without any Initial of the competent authority of the Board, It is thus submitted that in Item No. 72 of the Impugned order (Annexure 3) the authority of the Board was justified in determining 30 years as his age on 10.6.1963 and there is no infirmity in the said order. This Court is unable to accept the said submission of the learned Counsel for the Respondent-Board. It is true that genuineness of the original Service Book (Annexure "A") has not been disputed by the Petitioner. It is also true that on looking to the said Annexure A" from the naked eyes one can say that initially the age of the Petitioner recorded in the Service Book was 30 years on 10.6.1963, which has been penned through and altered to 24 years without any initial, much less, of the competent authority. But still the authority of the Board cannot be held to be legally justified in recording the aforesaid finding contained in Annexure 3, when by the same order the matter was referred to the General Manager-cum-Chief Engineer for sending administrative report within a month. However, this will not improve the position, as in my opinion, it will really amount to performing empty formality of complying with the rules of natural justice. Thus, this Court is of the view that the Respondent-authority has rightly determined that the Petitioner was 30 years of age on 10.6.1963.

5. An interlocutory application bearing I.A. No. 12227 of 1999 has been tiled on behalf of the Petitioner seeking direction to the Respondents to release the post retiral benefits without prejudice to the right and contention of the Petitioner raised in the main writ petition. In this regard the learned Counsel for the Respondent-Board has submitted that the prayer made in this interlocutory application is not tenable as it is a fresh cause of action for which the Petitioner should have filed a separate petition. This Court finds substance in the said submission of the learned Counsel of the Respondent-Board. But having regard

to the fact that the payment of the retiral benefits have been kept withheld only on account of the dispute regarding the age of the Petitioner. This Court in the facts and circumstances of the case considers it expedient to consider the prayer made in the said interlocutory application also.

6. Mr. Sanyal, learned Counsel for the Petitioner then submitted that in view of the law settled by the Apex Court in the case of Sahib Ram Vs. State of Haryana and Others, no recovery of the alleged excess payment is permissible in absence of any finding legally recorded about the commission of any fraud or misrepresentation by the Petitioner on account of which the Board continued to take work from him till the impugned orders have been passed in the year 1998. This Court finds substance in the said submission of the learned Counsel for the Petitioner. In view of the law settled by the Apex Court, in the absence of any such finding the Board cannot make recovery of the salary and other emoluments paid to the Petitioner during the said period after taking work from him. However, this Court in the case of Smt. Sushma Prasad Vs. The State of Bihar and Others, decided that in such type of cases retiral benefits can only be computed on the basis of salary admissible on the actual date of retirement.

7. Accordingly, this writ application is disposed of with a direction to the Respondent-Board to fix the pensionary benefits, of the Petitioner on the basis of his actual date of retirement as mentioned in Annexure "A" to the counter affidavit without, making any recovery for the period during which the Board has taken work from the Petitioner after the said actual date of retirement and necessary sanction order/payment should be made to the Petitioner accordingly within two weeks of the receipt/production of the copy of this judgment/order. In the circumstances of the case, however, there shall be no order as to costs.