

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13131 of 1996

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Bihar State Electricity Board through tis Chairman

.... Petitioner/s

Versus

The Presiding Officer, Labour Court, Patna & ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. V.N. Sahay and Mr. B.K. Sinha

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-02-2015

Heard learned counsel for the petitioner and the State.

No one appears on behalf of private respondents.

In this case the petitioner is challenging the Award dated 1st of April, 1995 in Reference Case No. 26 of 1990 by which the Labour Court, Patna, accepted the plea of the workman that his date of birth is 17.05.1935.

It appears from the record that the workman had entered into service of the management on 17.05.1956 at the age of 21 years .According to the petitioner that his date of birth was recorded in the service book as 17.05.1935 on the basis of certificate issued by Khaderan Madhya Vidyalaya, Nepura, Patna. As per the claim of the workman the said certificate was produced before the then Electrical Superintending Engineer, Patna Circle, of Bihar State Electricity Board. A plea has been taken by the workman that during the course of employment he received a notice vide memo no. 295,dated 23.05.1988 issued by the Electrical Executive Engineer of the Board informing him, he superannuated from service with effect from 17.05.1985 retrospectively. As per the claim of petitioner the date of birth on the service book was recorded as 17.05.1935, he was to serve the Board for few more years. It is the further stated that as per the Standing Order he was required to be given six months prior notice with respect to his retirement

but that was also flouted resulting that he was made to retire from service with retrospective date. Had the workman been given advance notice, he would have pointed out the irregularity committed in his case which could have been corrected.

The Government of Bihar, on the basis of industrial dispute raised in exercise of power under Section 10 of the Industrial Dispute Act, vide notification No. 3/D1-18016/90 L & E- 396, dated 17th May, 1990, was pleased to refer the following dispute for adjudication before the Labour Court, Patna.

“Whether the retirement of Sri Ganga Sagar, Pradhan Sarni Purush before time by entering wrong date of birth is justified ? If not, what relief he is entitled to?”

The petitioner management had filed his written statement. The management took a plea that in the original service record, the date of birth is recorded as 17th May, 1932 but later fabricated so much so the basis of entry in the service book is the certificate issued by the school but the school informed the petitioner management that the school had not issued such School leaving Certificate to the workman, which was the basis of recording his date of birth. Before the Labour Court the workman himself examined in corroborating evidence officer of Union was also examined. The management also examined its witnesses but the service book was not produced before the Labour Court for proper consideration.

Before this Court, in the writ petition, a photo copy of service book has been produced and the counsel has drawn the attention of this court on the date of birth recorded which shows that there was manipulation in the date of birth recorded therein. He has further submitted that the letter issued by the school where it has been mentioned that workman was not issued Transfer Certificate and argued that in such view of the matter the date of birth, which has been claimed by the workman is completely manipulated and illegal. On proper

examination of the service book it appears that the date of birth as 17.05.1925 has been made 17.05.1935 and on that basis he continued to serve the Board for certain more years. It is admitted fact that the first page of service book was not produced before the Labour Court.

On the basis of oral arguments, the Labour Court arrived at the finding that the date of birth is 1935. The service book shows something wrong in recording the date of birth. It appears from the service book that some manipulation has been done, which cannot be denied.

From letter dated 19.10.195 it appears that the date of birth in the school is recorded as 15.03.1941 and no Transfer Certificate was issued by the school. If the date of birth was recorded in the school register is to be taken then in such circumstances instead of 17.02.1925 it will be treated as 15.03.1941 but this court is not going on that score.

Before the Labour Court, no material was brought for consideration, so much so letter of the School has been issued after the Award has been passed by the Labour Court, this Court is not exercising the power of appellate jurisdiction. When the document itself was not produced before the Court it cannot be said that any irregularity was committed by the Labour Court, so much so more than 25 years have passed, even assuming that there is any manipulation in the date of birth, as claimed by the management, it will not be proper that the matter should be remanded back to the Labour Court for fresh adjudication. This Court is of the view that instead of remanding the matter back for fresh adjudication, the Board is directed to pay 50% of the back wages. To that extent order passed by the Presiding officer, Labour Court is modified.

The writ petition stands disposed of.

(Shivaji Pandey, J)

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