

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4397 of 2000

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Budhan, son of Late Shital resident of village Sanaura, P.O. – Tilauthu, P.S. and District Rohtas

.... Petitioner/s

Versus

1. The State of Bihar through the Chairman, Bihar Electricity Board, Bidyut bhawan, Bailey Road, Patna
2. The Engineer-in-Chief, Bihar Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. The Chief Engineer, Bihar Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. Executive Engineer, Bihar Electricity Board, Dihri –on-Sone, District - Rohtas
5. The Superintending Engineer, Bihar Electricity Board, Sasaram, District - Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Din Bandhu Singh

For the Respondent/s : Mr. Vijay Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-06-2015

Heard Sri Din Bandhu Singh, learned counsel for the petitioner and Sri Vijay Kumar Verma, learned counsel for the respondents.

The petitioner, invoking writ jurisdiction of this court under Article 226 of the Constitution of India, has prayed for quashing of letter no. 996 dated 24.4.2000 (Annexure -1 to the writ petition) whereby the petitioner was directed to be considered as retired with effect from 31.3.1990 on the basis of medical reports which indicated the age of the petitioner on 25.3.2000 as 70 years. Learned counsel for the petitioner submits that the petitioner was appointed as Class -



IV employee i.e. Khalasi in the year 1968. Subsequently, the service book was opened, in which on the basis of medical report his age was assessed as 37 years. While the petitioner was continuing to discharge his duty the respondent no. 5 suo motu decided to get examined the petitioner and other similarly situated employees by a medical board to ascertain the age. He submits that after receipt of the report of the medical board, without any notice to the petitioner, by Annexure – 1 to the writ petition which was issued on 24.4.2000, the petitioner was forcibly retired, that too, with retrospective effect i.e. with effect from 31.3.1990.

At the very outset learned counsel for the petitioner has produced a photo copy of an order of the Apex Court passed in Civil Appeal No. 9655 of 2003 (arising out of SLP (C) No. 24333 of 2002) (KAILASH SINGH Versus STATE OF BIHAR & ORS.). Let it be kept on record. He submits that in identical situation the said Kailash Singh was also forced to retire with retrospective effect and in his case besides retiring with retrospective effect direction was given to recover the salary for the said period. The Apex Court finally allowed the appeal and directed the respondent, particularly, respondent / Bihar State Electricity Board to pay retiral dues to the said employee treating the date of retirement from the date of issuance of letter of retirement i.e. order dated 24.4.2000. Sri Din Bandhu Singh, has

confined his prayer to the extent that the present writ petition may also be allowed in same terms i.e. in terms of the order passed by the Apex Court.

In this case the respondent by way of filing counter affidavit had earlier raised preliminary objection on the ground that the petitioner without availing alternative remedy had approached this court and as such, the writ petition may be dismissed. In the counter affidavit the respondent/ Board has tried to justify the impugned order.

Sri Vijay Kumar Verma, learned counsel for the respondent/ Board on the basis of averments made in the counter affidavit, submits that since in the medical board the age of petitioner was assessed as 70 years, the order of retirement was passed after calculating the age of retirement. In view of medical board's report the petitioner has rightly been directed to retire with effect from 31.3.1990, however, he accepts that in similar case the Apex Court in Kailash Singh Case (Supra) has passed order whereby the respondent /Board was restrained from recovery of the salary and direction was given to pay retiral dues treating the date of retirement from the date of issuance of the impugned order.

In view of the facts and circumstances, particularly the fact that in similar situation the Apex Court in Kailash Singh Case (Supra)

while allowing the appeal had directed to pay post retiral dues to the petitioner treating the date of retirement as the date of issuance of the impugned order, the present writ petition stands allowed in similar terms. Accordingly, the order impugned i.e. Annexure - 1 is hereby set aside and direction is issued to treat the petitioner as retired with effect from the date 24.4.2000 and grant all retiral dues to the petitioner. The writ petition stands allowed.

All the benefits must be provided to the petitioner within a period of two months from the date of receipt / production of a copy of this order.

(Rakesh Kumar, J)

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