

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10324 of 2015

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1. Sudha Ojha W/o Late Dharmnath Ojha, Resident of Mohalla - Badi Patandevi Colony, P.O. Gulzarbagh, P.S. Alamganj, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Finance, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Secretary (Expenditure), Department of Finance, Govt. of Bihar, Patna
4. The Deputy Secretary, Department of Finance, Govt. of Bihar, Patna
5. The Awar Sachiv, Department of Finance, Govt. of Bihar, Patna
6. The Special Work officer - Cum - Director (Press), Department of Finance, Govt. of Bihar, Patna
7. The Superintendent, Secretariat of Press (Sachivalaya Mudranalaya), Gulzarbagh, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar No.1

For the Respondent/s: Mr. Amit Kumar Anand, AC to GP15

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 21-09-2015

Petitioner has filed the present writ application for quashing the order dated 22nd May, 2015, contained in Anneuxre-12. By virtue of the impugned order dated 22.5.2015, claim of the petitioner that her date of birth is 5.3.1958 has been rejected and trashed on the basis of official records and declaration, made by the petitioner herself, over a period of time. The respondents have stuck to the position that in view of above evidence her date of superannuation shall be and remain 30th June, 2009.

2. If this order is quashed the petitioner gets another 11 years of service under the respondents.

3. When counter affidavit was filed on behalf of the State, they brought certain evidence on record in support of the decision, contained in Anneuxre-12. Stand and position of respondents has been seriously contested by the petitioner by filing a rejoinder and supplementary affidavit. Based on certain judicial pronouncements she sticks by the position that respondent authorities cannot look into any other material if date of birth is subject matter of dispute beyond the matriculation certificate. Petitioner has also annexed certain judgments with the supplementary affidavit cum written argument.

4. The matriculation certificate and the date of birth indicated therein do not match with the chain of evidence nor do the official records in relation to the declarations made by the husband of the petitioner when he entered service on 1.3.1961. The Court directed the State counsel to produce the original records, verify things for itself because there cannot be such a huge variance in the date of birth of the petitioner declared by the husband and even herself in some of the documents.

5. The original service book of the petitioner's husband as well as the file relating to grant of family pension etc. has been tendered to the court. The date of birth of the petitioner's husband is

2.11.1937 and the date of entry in service is 1.3.1961.

6. Husband of the petitioner was a Class IV employee. He joined his service as a Darwan and later on, occupied the post of Cylinder Proof Press Man. He died in harness on 3.6.1985. Petitioner filed several applications and forms for settlement of her family pension and other dues of her erstwhile husband. She also made a claim for compassionate appointment. Compassionate appointment was offered on 8.6.1990.

7. There is no dispute that after the petitioner completed all the formalities of begetting family pension and other settlement of the erstwhile husband, the same was sanctioned and she also started working on the basis of compassionate appointment. Down the line the respondent authorities discovered from the service records and the declarations that the date of birth of the petitioner even declared by her and the husband was 1949. The authorities therefore decided to work out the date of retirement of the petitioner on the basis of the year of birth as 1949. She was given an opportunity of show cause, which was availed. She pressed into service the matriculation certificate and that seems to be the sheet-anchor of her claim.

8. In normal course of things, the date of birth indicated in a matriculation certificate is acted upon but there are ifs and buts. If there is overbearing evidence otherwise that the petitioner's



declaration as to the date of birth is not truthful when she sat for the matriculation examination, the Court will not blindly accept that date as binding. There is no thumb-rule. It can vary on facts. Petitioner passed matriculation examination with the object of obtaining position after the death of her husband in the year 1985. Even according to her, she appeared in the matriculation examination and her result declared in the year 1988.

9. Service book as well as the pension papers duly signed by the petitioner indicates the date or year of birth, under her own signature, as 1949 and that of the son as 1971 and daughter as 1973.

10. Now in the writ application the date of birth of the son is indicated as 15.1.1973 and daughter as 6.6.1975 again on the basis of matriculation certificate.

11. If 5.3.1958 is accepted as the date of birth of the petitioner then she was only two years of age when her husband entered service. When pointedly asked, when the petitioner got married to Mr. Ojha, she does not want to disclose because even those fact will throw up mismatch on the birth and her age when the two children were born. Even if, the age of the petitioner on the basis of matriculation certificate for the sake of argument is accepted to be 1958, she was about 15 years of age when she gave birth to the first offspring. The husband was of 33 years age then. A huge mismatch.



In view of the overbearing evidence this Court is unwilling to allow a person to take advantage of situation which suits him or her according to convenience. If the date/year of birth given by the petitioner in the declarations before the respondent authorities for grant of family pension holds true, which is in her pen and signature, it cannot be allowed to be changed for the purpose of superannuation, on the basis of matriculation certificate. If those declarations were not under the signature of the petitioner, there could have been an arguable case that it was filled up by somebody else and she was a mute spectator. But it does not seem to be so.

12. In other words, the matriculation certificate has been brought into existence subsequently mentioning a different date of birth, obviously, for the purpose of gaining additional number of years of service under compassionate head, after death of her husband in 1985. The narration of facts and events taken note of by the Court in earlier part of the order is corroborated by the original documents available in the file and also appended with the counter affidavit, establishes the fact that in the present case the principle and ratio laid down in the judgments which is being pressed into service by the petitioner to treat her matriculation to be the correct date of birth for all purposes cannot be accepted. The facts of the case make this case exceptional and it cannot be covered by the principle enunciated in the

decisions being relied upon by the petitioner or her counsel in support thereof.

13. The Court, therefore, comes to a considered opinion that Anneuxre-12 does not suffer from any infirmity whatsoever. The decision of the respondent authorities is based on the evidence and documents whose authenticity cannot be doubted. In fact, any interference with the said decision would amount to rewarding the dishonest conduct of the petitioner.

14. The petitioner has superannuated. She got employment under compassionate head but too much compassion is also bad for the system as well as maintaining honesty in the system. The facts being such the Court was inclined to order prosecution of the petitioner because every person is expected to approach a Court of Law with clean hands and clear antecedents. Juggling around with documents and papers to achieve an objective is not appreciated nor condoned.

15. Looking at the advanced age of the petitioner since she was born in 1949, the Court takes a lenient view and does not order for prosecution. However, a cost of Rs.5, 000/- is awarded upon the petitioner for filing misleading evidence for assailing the order impugned, contained in Anneuxre-12. The cost of Rs.5,000/- will be deducted from her pension or other outstanding dues and deposited

with the Legal Services Committee of the Patna High Court so that such money can be utilized by a really needy litigant.

16. Writ application is dismissed.

17. Let the original records be returned to the State counsel for safe custody because it may be required for future use.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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