

Civil Writ Jurisdiction Case No.9473 of 1999

Gopal Chandra Srivastava, Son of Late Sarju Prasad, resident of Village Pokhrare, PO Pachrukhy, P.S. Pachrukhy, District-Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. The Development Commissioner, Sahibganj
3. The Deputy Development Commissioner, Sahibganj
4. The Director, Animal Husbandry Department, Bihar, Patna
5. The Deputy Director, Animal husbandry Department, Bihar, Patna.
6. The Administrator, Bihar State Tribal Cooperative Development Corporation Ltd., Ranchi
7. Sri Jai Prakash Narayan, Executive Officer, Dumka Bihar State Tribal Cooperative Development Corporation Ltd., Dumka.
8. The Secretary, Bihar School Examination Board, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Prakash
Mrs. Soni Shrivastava
For the Respondent/s : Mr. Punendu Singh

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 05-05-2015

1. This is an application seeking quashing of Office order No. 64 dated 9th August 1999 issued by the Administrator, Bihar State Tribal Cooperative Development Corporation Ltd., Ranchi issued vide memo no. 397, whereby, the petitioner has been made to retire from the post of Executive Officer, Bihar State Tribal Cooperative Development Corporation Limited, Ranchi, however, on the ground that his actual date of birth was 1.3.1941 and he attained the age of superannuation on 1.3.1999. Since the petitioner worked up

to 9.8.99, the respondents have also taken a decision by the impugned order to recover the amount paid to the petitioner for the said period i.e. from 1.3.1999 to 9.8.1999.

2. The dispute relates to petitioner's date of birth. According to the Corporation, the petitioner's date of birth is 1.3.1941 as mentioned in the gradation list of the Officers of his cadre, whereas the petitioner has claimed his date of birth to be 13.6.1943, on the basis of which he should have continued up to 30.6.2001.

3. Learned counsel for the petitioner has drawn my attention to a copy of the Service Book which has been brought on record by way of Annexure-16 to a supplementary affidavit filed on behalf of the petitioner in support of his claim that 13.6.1943 is the date of birth mentioned in the service book.

4. By an interim order dated 9.12.1999 passed in this case, the Respondents were directed not to make recovery from the retiral dues of the petitioner.

5. By an order dated 5.4.2000, this Court had directed the respondents to produce a original service book of the petitioner positively on the next appointed day, failing which the Court would proceed on the basis of Annexure-16, copy of the service book which has been brought on record by the petitioner, as noted above.

6. Learned counsel for the petitioner has though



emphasized that the petitioner's actual date of birth is 13.6.1943, he submits that he confines the relief sought for in the present writ application to restrain the respondents from making recovery of the salary paid to the petitioner from 1.3.1999 to 9.8.1999 in terms of the impugned order of the Corporation. He has contended that in any view of the matter, there is no dispute about the fact that the petitioner in fact discharged his duties during the said period and he was entitled for emoluments for the same. He has also submitted that failure on the part of the respondents to produce the service book requires this Court to draw an adverse inference.

7. Learned counsel appearing on behalf of the Respondent State of Bihar as well as learned counsel appearing on behalf of Bihar School Examination Board have opposed the relief sought for in the present writ application.

8. However, in the facts and circumstances of the case, I find that the stand taken on behalf of the petitioner, confining his relief to seeking direction from this Court to restrain the respondents from making recovery for salary paid to the petitioner from 01.03.1999 to 09.08.1999, to be fair one, particularly in view of the interim order earlier passed by this Court dated 9.12.1999 and subsequent order dated 5.4.2000, whereby this Court had required the respondents to produce the service book of the petitioner which they

have miserably failed.

9. In view of the above, the impugned order dated 9.8.1999 issued vide Memo no. 397 under the signature of Administrator, Bihar State Tribal Cooperative Development Corporation Ltd., Ranchi is quashed to the extent it relates to recovery of the amount of salary paid to the petitioner for the period 1.3.1999 to 9.8.1999.

10. Learned counsel for the petitioner has relied upon the Supreme Court judgment reported in (2015) 4 SCC 334 (State of Punjab and ors. Vs. Rafiq Masih & Ors)) in support of his contention that no recovery of the amount paid to the petitioner should be allowed after his superannuation.

11. This application is allowed to the extent as indicated above.

12. There shall be no order as to cost.

(Chakradhari Sharan Singh, J)

ArunKumar/-

U			
---	--	--	--