IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.607 of 2015

IN

Civil Writ Jurisdiction Case No. 16553 of 2013

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1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Military Police), Bihar, Patna.
4. The Deputy Inspector General of Police (Militry Police) (Central Range), Bihar, Patna.
5. The Commandant, Bihar Military Police 10, Patna.

.... Appellants

Versus

Ram Akhilesh Singh, Son of late Daulat Singh, resident of village - Lalna Dih, Police Station - Harnaut, District - Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Rajiv Roy, G.P.-5
Mr. Suresh Kumar, A.C. to G.P.-5

For the Respondent : Mr. Bindhyachal Singh, Adv.
Mr. Satya Prakash, Adv.
Ms. Smriti Singh, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 08/10/2015

The State of Bihar and its officials have preferred the present appeal, under Clause 10 of the Letters Patent of this High Court, aggrieved by the judgment and order, under appeal, dated 10.11.2014, passed by a learned single Judge, in C.W.J.C. No.16553 of 2013, whereby he has allowed the writ application, filed by the sole respondent herein seeking correction of his date of birth as recorded in his service book.

2. The learned single Judge has dealt with the facts of the case in detail, in the judgment, under appeal, dated 10.11.2014. We, therefore, without going into all such facts, in detail, would be referring to short facts relevant for adjudication of the present appeal.

3. The sole respondent herein, who was petitioner in the writ proceeding, has been appointed, as a Constable, in Bihar Military Police, in the year 1977. At the time of his appointment, he had produced his matriculation certificate, granted by the Bihar School Examination Board, Patna, showing his date of birth to be 01.01.1956. This is not in dispute that, as on the date of his appointment, the respondent had produced the certificate, granted by the Bihar School Examination Board, Patna, in which his date of birth, as 01.01.1956, was recorded. For the reason, not known, in the service book his date of birth came to be recorded as

01.01.1955.

4. From the pleadings on record, it appears that, in the year 2009, the respondent preferred an application before the Deputy Inspector General, Bihar Military Police, Bihar Patna, for correction of his date of birth from 01.01.1955 to 01.01.1956 on the basis of entry in his matriculation certificate. There being delay in making application for correction, the Deputy Inspector General, Bihar Military Police, dismissed it, vide order, dated 02.07.2009. The respondent, thereafter, filed a memorial before the Additional Director General, Bihar Military Police, Bihar, Patna. Referring to Rule 96 of the Bihar Financial Rules ***(hereinafter referred to as the "Rules")***, the Additional Director General, Bihar Military Police, rejected the respondent's memo of appeal, vide order, dated 16.05.2013.

5. Aggrieved by the said decisions, as above, the sole respondent preferred an application, under Article 226 of the Constitution of India, seeking quashing of the orders, dated 02.07.2009 and 16.05.2013, respectively, as aforesaid, which gave rise to C.W.J.C. No.16553 of 2013. He has also sought a direction, in his writ application, for correcting his date of birth from 01.01.1955 to 01.01.1956. Learned single Judge allowed the said writ application, in the absence of any dispute that at the time of his appointment, the petitioner-respondent had submitted his matriculation certificate, according to which, his date of birth was 01.01.1956.

6. We have heard Mr. Rajiv Roy, learned G.P.-5, appearing on behalf of the appellants-State of Bihar and Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the respondent.

7. Mr. Rajiv Roy, learned G.P.-5, appearing on behalf of the appellants-State of Bihar, has heavily relied upon Rule 96 of the Rules in support of his plea that it was not at all permissible for the authorites to entertain a representation for rectification of mistake in the date of birth as entered into records of the service book of a government servant if not submitted within a period of ten years from the date of entry into government service. He has, accordingly, contended that the decision of the appellants-State of Bihar, in rejecting the representations, filed by the respondent, could not be faulted with and the learned single Judge has committed an error by interfering with the said orders and issuing a direction to make necessary correction in the service book as regards the respondent's date of birth.

8. Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the respondent, on the other hand, has placed reliance upon a Division Bench decision of this Court, in case of ***Tajuddin Khan vs. The State of Bihar***, reported in ***2014 (3) P.L.J.R. 746***, and has submitted that the provisions of Rule 96 of the Rules have been held not to be mandatory in nature and correction in the date of birth may be made even after expiry of the period mentioned in Rule 96 of the said Rules on justifiable and valid grounds.

9. In order to resolve the controversy involved in the present appeal, we consider it apt to quote Rule 96 of the Rules, which reads thus:-

> "***96.*** *Every person newly appointed to a service or post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certification, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under rule 97 should be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered, except in the case of a clerical error without the orders of the State Government.*
>
> ***[Note 1.–****No representation for rectification of mistake in the date of birth as entered in the records of service of a Government servant shall be entertained, if it is not submitted within a period of ten years of the date of his entry into Government service. Representation submitted thereafter will be summarily rejected by the authority competent to pass final orders under this rule* <u>*unless there*</u>

> *are very exceptional cases to relax this time-limit.]*
>
> **Note 2.–***Heads of departments are authorised to exercise this power in the case of non-gazetted Government servants under their control."*
>
> *(emphasis added)*

10. A bare reading of Note 1 of Rule 96 of the Rules will make it abundantly clear that competent authority is not divested of its power to make necessary correction in the date of birth in exceptional cases, by relaxing the time limit, as prescribed under the said Rule.

11. In our opinion, it appears to us that it was a mere clerical error, which occurred at the time of entering of date of birth of the petitioner-respondent in the service book, despite there being available, matriculation certificate, showing his date of birth to be 01.01.1956. Such power to make correction in the date of birth, when the error is of clerical in nature and manifest, must be exercised by the Head of the Department, by invoking his jurisdiction under Note 2 read with Note 1 of Rule 96 of the Rules.

12. Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the respondent, has rightly relied upon the Division Bench decision of this Court, in case of ***Tajuddin Khan*** *(supra)*, Paragraph-19 of which reads thus:-

> "***19.*** *Ordinarily, the date of birth, recorded in the Government employee's*

service book, cannot be changed. This does not, however, mean that in an appropriate case, date of birth of the Government employee concerned, as recorded by the competent Board, which conducts the examination, cannot be looked into for the purpose of verification. The idea behind Rule 96 of the Bihar Financial Rules, 1950, is to make a Government employee retire on reaching the date of superannuation. However, the object behind Rule 96 of Bihar Finance Rules, 1950, is not to punish a Government employee if his date of birth recorded is of a date earlier than the date of birth, which stands recorded in the relevant records of the Board or recorded in the records of the municipality concerned. A reference, in this regard, may be made to the cases of ***Murli Manohar Tiwary vs. The State of Bihar and Others****, reported in 1986 P.L.J.R. 1180, and* ***Ram Sobbhit Rai vs. The State of Bihar and Others****, reported in 1989 B.B.C.J. 141. In this regard, reference may also be made to a decision of the Division Bench of this Court in* ***Siyaram Singh vs. State of Bihar****, reported in 1995(1) P.L.J.R. 691."*

13. The decision of Division Bench in case of ***Tajuddin Khan*** *(supra)*, aforementioned, leads us to specific conclusion that Rule 96 of the Financial Rules is not mandatory and if the person concerned has passed the matriculation examination prior to his entry into service of the

Government, he is entitled to have his date of birth corrected, on the basis of date of birth mentioned in the matriculation certificate. Such situation will fall within the category of "exceptional cases" as envisaged under Note 1 of Rule 96 of the Bihar Financial Rules, which confers jurisdiction on the Head of Departments (Note 2) to make correction in the date of birth, entered in a service book of a non-gazetted government servant.

14. Mr. Rajiv Roy, learned G.P.-5, appearing on behalf of the appellants-State of Bihar, has contended that the respondent was aware of the entry of his date of birth in the service book as 01.01.1955, which contains his thumb impression and, therefore, if he had any objection over such entry, he could have raised it within a reasonable time and at least within the time prescribed under Rule 96 of the Rules. He has also placed reliance upon Supreme Court decision, reported in ***(1994) 6 S.C.C. 302 (State of T.N. vs. T.V. Venugopalan)***, in support of his submissions.

15. In our opinion, the said decision has no application, in the facts and circumstances of the present case, as, in our view, the error, in recording the date of birth of the respondent in the service book, as 01.01.1955, was purely clerical in nature, out of sheer mistake, despite there being on record the matriculation certificate, submitted by the respondent, showing his date of birth to be 01.01.1956.

16. We, therefore, do not find any merit in this appeal, preferred against the judgment, under appeal, dated 10.11.2014, passed by the learned single Judge, in C.W.J.C. No.16553 of 2013.

17. This appeal is, accordingly, dismissed.

18. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, ACJ. :- I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

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