

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9771 of 2000

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Baikunth Nath Khare son of late Ganesh Lal, resident of village Dadra P.S.
Dulahpar District Gajipur, State Utter Pradesh at present posted as Company
Commander Bihar Home Guard Arra.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
2. The Commandant General, Bihar Home Guards Chajjubagh, Patna.
3. The Commandant, Home Guards Head Quarter Chajjubagh, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Adv.
Ms Maruti Kumari, Adv.

For the Respondent/s: Mr. A. Ujjawal, S.C.-25
Mr. Upendra Pratap Singh, A.C. to S.C.-25

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 01-07-2015

This is an application seeking direction to the respondents to declare the decision of the respondents to alter the petitioner's date of birth from 01.05.1945 to 02.04.1943 as illegal, arbitrary and beyond jurisdiction.

2. It is the petitioner's case that at the time of his appointment as Home Guard in Bihar Home Guards on the basis of his date of birth mentioned in the transfer certificate issued by Sahai Sahpan High School, Saran, his date of birth was recorded in his Service Book as 01.05.1945, which was opened on 28.04.1967. It is



his plea that jurisdiction to change the date of birth as recorded in his Service Book vests in the Head of Department and in the present case, it vested in the Commandant General, Bihar Home Guards, whereas the decision to change the petitioner's date of birth, has been taken by the Dy. Commandant General, who is not the Head of the Department.

3. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondents stating therein that the person, who passed the order altering the petitioner's date of birth as mentioned in the service book from 01.05.1945 to 02.04.1943, was holding the charge of Commandant General, Bihar Home Guards at the relevant point of time and, therefore, he had the authority to alter the date of birth. It has, secondly, been contended that for the purpose of undergoing training as a Home Guard, the petitioner had disclosed his date of birth to be 02.04.1943 and, accordingly, the competent authority decided to change the date of birth mentioned in the Service Book to 02.04.1943. It is the stand of the respondents in their counter affidavit that if the petitioner's version, that his date of birth was, in fact, 01.05.1945, is accepted, he would not have been eligible for being sent for training as a Home Guard as he would have been under age.

4. Learned counsel appearing on behalf of the petitioner



has relied upon the transfer certificate issued by the Headmaster of Sahai Sahpan High School, Saran on 22.07.1957 in order to submit that petitioner's date of birth was rightly recorded as 01.05.1945 in the Service Book and has referred to a letter dated 30.10.1999 issued by the Director General-cum- Inspector General of Police, Bihar in order to contend that in case of any discrepancy in the date of birth as entered for his appointment as Home Guard and subsequent appointment as Constable, the date of birth recorded in the certificate issued by the Board should prevail. He has, accordingly, submitted that the date of birth as recorded in the transfer certificate issued to by the school, in the facts and circumstances of the case, should have prevailed.

5. There is no denial of the stand taken on behalf of the State-respondents that as on the date of taking decision for altering the petitioner's date of birth from 01.05.1945 to 02.04.1943, the Dy. Commandant General, Home Guards, was discharging the functions of the Commandant General, Home Guard who ordered for necessary correction in the date of birth. Therefore, his competence to take such decision cannot be challenged.

6. I do not find much substance in submission made on behalf of the petitioner that the date of birth as entered in the school transfer certificate should have prevailed, for the purpose of taking a

decision as regards the petitioner's actual date of birth, for the simple reason that the said decision of the Director General-cum- Inspector General of Police, Bihar relates to entry of date of birth existing in certificate issued by the Board. It is not the case of the petitioner that any certificate issued by the Board like Bihar School Examination Board or any other Board contained the date of birth of the petitioner as 01.05.1945. I find substance in the submission made on behalf of the respondents-State of Bihar that the petitioner had entered his date of birth as 02.04.1943 for purpose of undergoing training as a Home Guard and had it been claimed that his actual date of birth as 01.05.1945, he would not have been sent for such training, being under age.

7. In the facts and circumstances of the case, I do not find any reason to interfere with the decision challenged in the present writ application.

8. This writ application is, accordingly, dismissed.

9. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

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