

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15959 of 2007

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Sri Ram Sakal Rai, son of Fulchand Rai, resident of Village Nauachak, P.S. Mushrigharari, Dist. Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Samastipur.
3. The Superintendent of Police, Samastipur.
4. The Sub-Divisional Magistrate, Dalsinghsarai.
5. The Circle Officer, Sarairanjan Block, Dist. Samastipur.
6. The Officer Incharge Mushrigharari, P.S. Dist. Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachchidanand Choudhary, Adv.
Mr. Lovekush Kumar, Adv.

For the Respondent/s : Mr. K.K. Jha, (SC18)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 20-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“1. That this writ application is directed for issuance of writ in the nature of Mandamus directing the respondents to correct the date of Birth in the new service book of the petitioner and also to allow the petitioner to work on the post of Chaukidar till the date of Superannuation from the date of correct date of birth.”

3. Mr. Sachchidanand Choudhary, learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that when there are unimpeachable documentary evidence in the form of year of birth of the petitioner being 1959 recorded at the time of his



being engaged as a Chaukidar in the year 1978, the subsequent entry of the date of birth of 1949 in the service book at the instance of the respondents has to be held to be bad both on fact and in law. He has further submitted that when the petitioner had also pointed out this fact by filing a representation which was under active consideration, the authorities ought to have not retried the petitioner on the basis of his date of birth on 1.7.1949. Consequently, Mr. Chaudhary is of the view that this Court should allow the writ application and direct the respondent to correct the date of the petitioner in the service book. He has also in this regard relied on a judgment of the Apex Court in the case of *Mohd. Yunus Khan Vs. U.P. Power Corporation Limited & Ors.* reported in (2009) 1 SCC 80.

4. In this case, a counter affidavit has been filed and the respondents have produced a copy of the service book containing date of birth of the petitioner 1.7.1949 as also the G.P.F. records containing the same date of birth below which the petitioner has put his signature.

5. This Court has compared the signature of the petitioner as on Annexure-A, the extract of the service book as also the G.P.F. opening record (Annexure-B) which are of the year 1990 and 1992 with his signature on Vakalatnama and affidavit in this writ petition. On such comparison of both the signatures, this Court would find that



there is no difference in the signature of the petitioner and in fact Mr. Choudhary, learned counsel for the petitioner, also accepts that those signatures contained in Annexure-A and Annexure-B are of the petitioner. Mr. Choudhary, however, submits that the petitioner was a semi-literate person and, therefore, his signing on the service book or the G.P.F. record with the date of birth shall have no meaning much less his admission to his date of birth being 1.7.1949. According to him, after the petitioner came to know of such erroneous entry in his service book for the first time in the year 2007, he had filed a representation for its correction and when that was not done, he had filed the present writ application 6.12.2007.

6. In the considered opinion of this Court, there is no proof of the date of birth of the petitioner being 1959. As a matter of fact, 1959 is allegedly the year of birth of the petitioner. For that purpose, the petitioner wants to rely on some note-sheet which does not contain his signature. In the year 1978, in fact when the post of Chaukidar was not a post of government servant who become a government servant only in the year 1990 even service book of the petitioner was not opened as he was not a government servant. In the year 1978, the Chaukidars were out and out engaged by the Superintendent of Police on the order of the Collector but, not in government service. The Chaukidar in fact became government servant after the government



had taken a decision in the year 1990 and, at that point of time, recording of date of birth became necessary. From Annexure-A, the extract of the service book, it would be clear that the service book of the petitioner was actually opened on 12.7.1990 containing not only the name and date of birth of the petitioner but also the name of his father, permanent address and the identification mark. These details could not have been known to any one save and except the petitioner. Therefore, to say that the petitioner was a semi literate or half literate person will be of no avail.

7. As noted above, this Court could have only doubted such an entry of his date of birth of 1.7.1949 as recorded in his service book if there was any authentic document containing the specific and authentic date of birth of the petitioner as was the case in the case of Mohd. Yunus Khan (supra). From the judgment of Mohd. Yunus Kha (supra), it would be absolutely clear that there was a school leaving certificate in favour of him which had shown his date of birth as 1.7.1948 and the dispute, therefore in that case was as to whether the date of birth recorded as 27.2.1934 could be taken to be authentic date of birth. Here, as noted above, there is no other date of birth except his alleged year of birth of 1959. That however cannot be treated as sustainable cannot be plea for the petitioner to doubt the correctness of his own admission made in service book and G.P.F. record as

explained above.

8. The submission that the matter was pending before the authority and something was found in his favour is also factually incorrect. In fact, the Sub-Divisional Officer in the forwarding letter dated 27.1.2006 had only sent the application of the petitioner for doing needful in accordance with law. He did not find anything in favour of the claim of petitioner so as to make this document as an evidence in favour of the petitioner of his date of birth being 1959.

9. Way back, the Apex Court has held that at the time of retirement, the tendency of changing the date of birth an employee should never be encouraged much less allowed. Reference in this connection may usefully be made to the judgment of Apex Court in the case of State of U.P. Vs. Gulaichi reported in (2003) 6 SCC 483 following the earlier long line of cases including State of Tamil Nadu Vs. T.V. Venugopalan reported in (1994) 6 SCC 302 and Union of India Vs. Kantilal Hanataram Pandya reported in AIR 1995 SC 1349.

10. The petitioner, as noted above was to retire as per his entry made in the service book in the year 2009 with effect from 30.6.2009 and his prayer for change of date of birth as recorded in his service book recorded in the year 1990 on 12.07.1990 was made only in the year 2007 for changing the date of birth. Such belated application, therefore, was not capable of being entertained much less

allowed.

11. Thus, for the reasons indicated above, this Court does not find any merit in this writ application and the same is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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