

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14618 of 2007

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Moti Lal Prasad, son of late Banarsi Prasad, resident of village-Jiyay, Po.st:- Jiyay,
P.S. Siwan Muffasil, District- Siwan, presently posted as the post of peon in
Pachrukhi Block under the District of Siwan.

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Siwan
3. The Deputy Development Commissioner, Siwan
4. The Deputy Collector, (Nazarat), Siwan

.... Respondents

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Appearance :

For the Petitioner : Mr. Rakesh Kumar Shrivastava, Advocate

For the State : Mr. Bhaskar Mankar, A.C. to G.P. 16

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 10-12-2015

Heard learned counsel for the petitioner and the State.

In this writ application the petitioner seeks quashing of the Annexure 6 which is a letter no. 366 dated 24.12.2003 containing a decision that the District Magistrate has accepted the date of birth of the petitioner which stands recorded in the order no. 11/99 contained in memo no. 102 dated 26.10.1999 which has been appended as Annexure 2 to the writ application.

It is contended that the petitioner was working as peon in the district establishment under the Collectorate, Siwan and the persons selected were directed to join at the respective places described in Annexure 2. The petitioner joined under Deputy Development Commissioner, Siwan on 27.10.1999 and started



working. The petitioner was already appointed on the post of Class IV on regular basis and the service book of the petitioner was to be opened, however, the Deputy Development Commissioner, Siwan doubted about the date of birth of the petitioner and directed the Civil Surgeon – cum – Chief Medical Officer, Sadar to constitute a Medical Board for determination of age of certain persons including the petitioner vide Annexure 3 dated 28.9.2001. A letter was again written to the Civil Surgeon for constituting a Medical Board regarding four persons vide Annexure 4 dated 19.10.2002. Upon such request having been made by the Deputy Development Commissioner, Siwan, a Medical Board was constituted. Opinion of the Medical Board has been appended as Annexure 5 to the writ application which shows that petitioner's age has been found to be 38 – 39 years. However, vide Annexure 6 a decision was taken after perusal of the report of the Medical Board by the District Magistrate to consider the date of birth described in Annexure 2 itself to be the actual date of birth of the petitioner and, thereafter, vide Annexure 10 dated 5.4.2007, the petitioner was communicated to produce new service book so that necessary entry could be made in that. Petitioner has challenged the decision contained in Annexure 6.

A counter affidavit has been filed on behalf of the respondents. However, decision of the District Magistrate as referred

in the communication contained in Annexure 6 has not been brought on record but the Annexure 6 in clear terms says that, after opinion of the report of the Medical Board, the District Magistrate has taken a decision regarding entry of the date of birth of the petitioner as discussed above.

In paragraph 4 of the counter affidavit, a ground has been raised that the writ petition has been filed challenging Annexure 6 after a lapse of four years and, as such, the same should be dismissed on such ground alone. However, a rejoinder has been filed to the counter affidavit taking a stand that Annexure 6 was never supplied to the petitioner and the aforesaid letter came to the knowledge of the petitioner only after communication of Annexure 10 dated 5.4.2007 directing the petitioner and others to furnish service book in the office so that necessary entry could be made. Such objection raised by the State has to be rejected as no affidavit has been filed answering the petitioner's reply that Annexure 6 was never supplied to the petitioner. It appears from perusal of Annexure 6 that it is a communication of the order of the Deputy Collector (Nazarat), Siwan to the Deputy Development Commissioner, Siwan and it is merely a copy of the internal communication between the aforesaid two officers which was never sent to the petitioner. The other reason for not accepting the objection would be that even after



such decision having been communicated in the year 2003, the respondents themselves wrote a letter to the petitioner in the year 2007, i.e., about after four years directing him to produce a service book in the office so that necessary entry would be made. It clearly shows that the respondent authorities themselves were moving at snail pace, thus, they cannot blame the petitioner for delay in filing of the writ application. That apart even in the present case filed in the year 2007, a counter affidavit has been filed after about 8 years which goes to show laches on the part of the respondents.

Now coming to the merit of the case, it is submitted on behalf of the petitioner that once the respondents doubted the date of birth supplied by the petitioner and constituted a Medical Board which has come to the conclusion that the petitioner is aged about 38 – 39 years then they cannot be allowed to retract and consider the date of birth supplied earlier by the petitioner to be correct ignoring the opinion of the Medical Board specially when the opinion of the Medical Board has never been challenged or in the absence of any order or decision disclosing as to why the authority concerned did not find it to be correct. Averment has been made in counter affidavit disclose that the Medical report is not acceptable as it merely gives approximate age. In such a situation, the question would be that what was the requirement for instituting such Medical Board.



It appears from perusal of the report of the Medical Board that after clinical examination of the petitioner and also considering his denture and X-ray of joints etc., his age has been determined to be between 38-39 years. This Court in **Mehdi Mirza Vs. Bihar State Electricity Board & Ors. [2005(3)PLJR 325]** has laid down in clear terms that when the respondents Electricity Board on its own volition refers the matter to the Medical Board, it is trite law that if the Medical Board is constituted, then neither of the parties can be allowed to challenge the findings of the said Board. If the employee is bound by the findings of the Medical Board then the said findings would also bind to the respondents. The only exception to this generality would be that in a case where the age was to be accepted between minimum and maximum, the benefit of the minimum age would be given to the employee. The learned Single Judge, while expressing this view, has placed reliance upon a decision of the Division Bench of this Court rendered in **Bihar Electricity Board Vs. Bihar Powers Workers Union & Ors.[2000(3) PLJR 65]**, which itself has placed reliance upon a decision dated 5.3.1998 of a Division Bench rendered in L.P.A. No. 1532/1997.

Considering the aforementioned facts and circumstances, in my considered view, no option was open for the respondent

authorities to disregard the opinion of the Medical Board and again retract back to the age which was given by the petitioner on the earlier occasion which was doubted by them in express terms.

Accordingly, it is held that the petitioner's age has to be taken as 38 years on the date when the Medical Board had examined him. Let necessary entries be made in the service book of the petitioner.

The writ application stands allowed.

(Dr. Ravi Ranjan, J)

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