

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16461 of 2014

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Sudhansu Rai Son of Prabhunath Rai Resident of Village - Mirzapurr, P.S. -
Janta Bazar, District Saran (Chapra).

.... Petitioner/s

Versus

1. The Chairman Cum Managing Director National Projects Construction Corporation Ltd. Plot No. 67-68, Sector-25, Faridabad (Hariyana).
2. The Chief Manager (HR) N.P.C.C., Ltd, Corporate Office, Plot No. 67-68, Sector-25 Faridabad (Hariyana).
3. The Sr. Manager (P AND A), National Projects Construction Corporation Ltd., Plot No. 67-68, Sector 25, Faridabad (Hariyana).
4. The Manager (H.R.) N.P.C.C. Ltd, Corporate Office, Plot No. 67-68, Sector 25, Faridabad (Hariyana).
5. The Zonal Manager, N.P.C.C., Ltd, NEZ (P.M.C.) Silchar House No. 2, 2nd Floor, Aparajan Pally Sonai Road - 78806 (Assam).
6. The Zonal Manager, N.P.C.C., Ltd, Bihar Zone 15, I.A.S. Colony Kidwaipuri, Patna-1.
7. The Project Manager, N.P.C.C. Ltd, L.N.J.P Unit Nehru Chowk, Patel Bhawan, Krishnapuri, Nandlal Tola, Chapra (Bihar), Pin - 8413301.
8. The Headmaster, High School Kolhuan, Sahajitpur, P.S. Baniapur, Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Singh, Adv.

For the Respondent/s : Mr. Shailendra Kumar, Adv.

Mr. Arun Kumar Arun, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

3 18-02-2015 Heard learned counsel for the parties as with regard to the following reliefs, prayed in this writ application:-

“To quash the order contained in letter Ref. No. 1R/CO/C. Case/B ZO/SR/2014/18 dated 24.04.2014 (Annexure-13) issued under the signature of the Manager (HR) respondent no. 4 whereby and where under he rejected the representation filed by the petitioner in terms of order dated 03.01.2014 passed in C.W.J.C No. 10859013 directing the respondent no. 3 to consider the case for change of date of birth in the light of observations made in the order but the respondent no. 4 contemptuously took up the matter and without application of mind mechanically rejected the representation in arbitrary manner.

To direct and command the respondent to consider the school leaving certificate submitted by the petitioner at the very initial stage of engagement/appointment and find place in the service Card prepared in Duplicate one for the Unit Office and

Zonal Office and another for Head quarter and counter signed by the officials/competent authority.

To command and direct the respondents to take back the petitioner in service on the basis of date of birth recorded in school leaving certificate the number of which referred in both the service Card, with all back wages of the intervening period.

To command and direct the respondents to produce before this Hon'ble Court the Certificate referred in both the Service Card and also directing them to explain why the Date of Birth as per school leaving Certificate was not corrected particularly when it was submitted at the time of initial appointment as claimed by respondents the service card was prepared at the time of appointment in which the reference of Certificate has been given and claimed that date of birth has been recorded as per S.L.C or Medical Certificate.

To command the respondents to make necessary correction of date of birth as per the S.L.C. of the petitioner and reinstate the petitioner in service till the date of retirement i.e. 31.05.2018 as per the school leaving Certificate.”

Learned counsel for the petitioner in support of the aforementioned prayer has relied on various documents to contend that the date of birth of the petitioner is 06.05.1960, and according to such date of birth he was entitled to continue in service on completion of his 58 years of age i.e., till 06.05.2018, but he had been arbitrarily made to retire w.e.f 31.08.2013, on the basis of his date of birth of 01.09.1955. In this regard, he has referred to the entry made in Service Card as contained in Annexure-6, showing his date of birth of the year 1955 and 06.05.1960 as per his School Transfer Certificate.

Learned counsel for the respondents on the other hand has submitted that the petitioner is a workman of National Project



Construction Corporation Limited (hereinafter referred to as the Corporation) and would be covered by the provisions of Industrial Disputes Act and thus, if he has any grievance as with regard to his termination of service on account of the order of superannuation of 31.01.2013, the remedy for him would only be by raising industrial dispute and not by filing of writ petition under Article-226 of the Constitution of India.

In this regard, reliance has been placed by learned counsel for the respondents on a Division Bench judgment of this Court in the case of *Abdul Khalique Vs. H.E.C. Ltd. & Ors.* reported in *1985 BBCJ 114* and again reiterated in the case of *Sidheshwar Prasad Vs. Bihar State Road Transport Corporation & Ors.* reported in *2003(2) PLJR 841*.

Learned counsel for the petitioner in reply submits that the petitioner had earlier filed writ application assailing the aforementioned order of superannuation of the petitioner dated 31.01.2013, whereby and whereunder, he was sought to be superannuated w.e.f 31.08.2013 in C.W.J.C No. 10859 of 2013, which was disposed of by order dated 03.01.2014 by directing respondent no. 3, Sr. Manager (P& A), National Projects Construction Corporation Ltd, Plot No. 67-68, Sector-25, Faridabad (Haryana) to pass a fresh order.

In the considered opinion of this Court, the issue of date of



birth of the petitioner in view of the complicated question of fact cannot be adjudicated under the jurisdiction of this Court under Article-226 of the Constitution of India specially when it is an admitted fact that the petitioner was a workman in Corporation. Admittedly, the petitioner was appointed in the work charge establishment of the Corporation on 26.12.1984, on the post of Tradesman Grade-II (Turner), after he has served the Corporation on daily wages from 1980 to 1984. On the date of retirement also the petitioner was only working as a workman which is evident from the impugned order dated 31.01.2013 notifying the date of superannuation of the number of workman including the petitioner shown to be working as Tradesman Grade-II, such workman are also covered by the certified standing order of the Corporation which is class-IV (c) lays down that the age of workman as recorded with the Corporation at the time of his employment was thereafter altered by the workman.

It is true that the writ application of the petitioner was entertained and disposed of by this Court by order dated 03.01.2014, but then the question of maintainability of the writ application on the ground of the petitioner being workman and covered by the certified standing order and thus his remedy against termination of his service on account of his superannuation was not gone into. As noted above, the Division Bench of this

Corut in the case of *Abdul Khalique (supra)* has held that such question cannot be adjudicated in writ jurisdiction under Article-226 of the Constitution of India and the remedy for the workman is to seek remedy under Industrial Disputes Act. The aforesaid view has been reiterated in the case of *Sidheshwar Prasad (supra)*..

In view of the above, this Court would refuse to go into the correctness or even otherwise of the impugned order dated 24.04.2014, relevant portion whereof reads as follows:-

“Ref. No. IR/CO/C.Case/BZO/SR/2014/18 Dated 24 April, 2014

ORDER

In pursuance to the Order passed on 03.01.2014 by the Hon'ble High Court of Judicature at Patna in C.W.J.C No. 10859 of 2013 titled as Sudhanshu Rai versus Chairman cum Managing Director, National Projects Construction Corporation Limited & Ors directing thereby to the Respondent No. 3 i.e. Sr. manager (P&A), National Projects Construction Corporation Limited, presently posted at Corporate Office, N.P.C.C. Limited, Plot No. 67-68, Sector-25, Faridabad being Incharge of the IR section have duly considered the said Application on matrix of facts and under the relevant rules of the Corporation as follows:-

1. That Shri Sudhanshu Rai joined the services of the Corporation as Turner on 20.09.1980 and he retired from the services of the Corporation on 31.8.2013 as T.M. Spl. Gr.-II (T) on attaining the age of superannuation i.e. 28 years from LNJP Unit, Chapra.

2. That the Applicant/Petitioner has stated in the aforesaid Application dated 18.3.2013 that the order of retirement from the services of the Corporation was received by him on 15.3.2013 whereby it was informed that the Applicant is to retire from the services of the Corporation on 31.8.2013 on the basis of his date of birth being 1.9.1955. Further, he has stated in the said Application that this date of birth is 6.5.1960 and prayed to consider the same accordingly.

3. That the Applicant/Petitioner is governed by the Certified Standing Orders of the Corporation. The relevant clause i.e. 4(b) and 4(c) of the certified standing Orders are reproduced as under:-

“4(b) A workman who is unable to produce a documentary evidence as stated above of his age, shall state his

age and make a written declaration that the age as stated by him is correct. In case the Manager desires to establish the authenticity of age declared by the Workman, he may either refer the workman to the Corporation's authorized medical Officer or to a Civil Surgeon.

4(c) The age of workman as recorded with the Corporation at the time of his employment shall not thereafter be altered by the workman."

4. That in order to consider the Application of the petitioner, comments along with the records were sought from the Bihar Zonal Office, Patna on the said Application of the Applicant/Petitioner as the LNJP Chapra Unit Office falls within the jurisdiction of Bihar Zonal Office, Patna where he was posted at the time of his superannuation from the services of the Corporation on 31.8.2013.

5. That the Zonal Manager stated in his comments in the matter that there is no counter signature of any officer on the subsequent entry made in the Service Card maintained at the Unit level and even there is no date as to when the subsequent entry was made in the Service Card. Further, he has very categorically stated that the subsequent entry is not at all allowed/permitted in the Service Card as per the Clause 4(c) of the Certified Standing Order and the date of birth once recorded cannot be altered thereafter. He has further stated that the subsequent entry made in the Service Card of the Petitioner is manipulation as the same is not allowed within the Rules of the Corporation.

6. That after perusal of both the Service Cards maintained at Corporate Office and Zonal/Unit Office, it is found that the educational qualification as declared by the Applicant/Petitioner at the time of joining the services of the Corporation is under Matric and the date of joining as mentioned in both the Service Cards is 20.09.1980. As far as the date of birth of the Applicant/Petitioner is concerned, he has himself declared the same in the Service Card at the time of his joining as 1.9.1955. However, in the Service Card maintained at Zonal/Unit Level, the date of birth i.e. 1.9.1955 declared at the time of joining by the Workman is encircled and a subsequent entry is made mentioning thereby 6.5.1960 (as per School Transfer Certificate) but no such entry is there on the service Card maintained at Corporate Officer of the Corporation. In this regard, it is pertinent to mention here that at the time of joining of a Workman, two Service Cards are prepared in original wherein the declaration to the effect that the particulars such as educational qualification and date of birth etc. are authentic, is made by the Workmen and countersigned by the concerned official of the Unit. Thereafter, one Service Card is kept at the zonal/Unit level and another Service Card is kept at Corporate Office of the Corporation. Therefore, it is abundant clear that the entry i.e. 6.5.1960 is a

subsequent entry made in the Service Card maintained at Zonal/Unit Level.

7. *That after going through the comments of zonal Manager, the relevant records of the matter, the rules applicable on the Workman thereto i.e Certified Standing Orders of the Corporation, it is found that there is no countersign of any competent official and also no date is mentioned on the subsequent entry made on the Service Card maintained at Zonal/Unit Level. Moreover, after going through the relevant rules i.e. Clause 4(b) and 4(c) of the Certified Standing Order, it is found that under Clause 4(c), it is stipulated that the "age of workman recorded with the Corporation at the time of his employment shall not thereafter be altered by the workman." Therefore, the subsequent entry made in the Service Card maintained at Zonal/Unit Level is unauthorized as it is contrary to the rule i.e. Clause 4(c) of the Certified Standing Orders of the Corporation. As far as the copies of Standing Orders of the Corporation. As far as the copies of certificates attached with the said Application are concerned, the same have no relevancy at this belated stage under the said rule 4(c) of the Corporation applicable to the Applicant/Petitioner.*

Keeping in view the aforesaid observations, findings and relevant rules of the Corporation, I do not find any merits in the application filed by Shri Sudhanshu Rai under the aforesaid facts and relevant rules applicable thereto.

Hence, the aforesaid Application of the Applicant/Petitioner is hereby rejected.

*(Shagun)
Manager (HR)"*

From the reading of the aforementioned order, it would be absolutely clear that the petitioner was a workman and was covered by the certified standing order and as such the dispute as to whether his termination of service on account of his retirement benefit w.e.f. 01.09.2013 is correct or otherwise would be required to be gone into by the competent Labour Court in terms of Section-10 of the Industrial Disputes Act. This Court therefore, for the time being would also refrain from making any comment as



with regard to the change of date of birth of the petitioner from 01.09.1955 to 06.05.1960, specially when the same involves several disputed question of fact including the interpolation and change in the Service Card of the petitioner as noted in the aforementioned impugned order. The moment this Court would find that the petitioner is workman, remedy for him would be only under the Industrial Disputes Act and not under Article 226 of the Constitution of India.

Thus, in the light of the aforementioned discussion and the law laid down by the Division Bench in the case of *Abdul Khalique (supra)* and *Sidheshwar Prasad (supra)*, wherein, it was held as follows:-

*“10. Having appreciated the rival submission, I do not have the slightest hesitation in accepting the broad submission of Mr. Mukhopadhyaya that existence of an alternative remedy does not bar the jurisdiction of this Court. This is a rule of discretion and not of jurisdiction. In fact no fetter has been placed by the Constitution on this Court for exercise of power and one of the well known limitations put by this Court upon itself is that in the face of alternative efficacious remedy, jurisdiction under Article 226 of the Constitution is not fit to be exercised, except in grave and exceptional cases. In the present case, the allegation against the petitioner is of misconduct in relation to carrying passengers without ticket. He has been found guilty of said misconduct and dismissed from service. I am of the opinion that the matter of dismissal of a workman employed by the Corporation can appropriately be adjudicated in accordance with the mechanism provided under the Act. The view which I have taken is in conformity with the decision of this Court in the case of **Abdul Khalique vs. H.E.C. Ltd. and others** (1985 BBCJ 114) in which it has been held as follows:-*

“Where a right or liability is created by statute, if that statute provides a remedy, the remedy provided by that statute alone must be followed. The rights and

liabilities have been created by the certified Standing Orders. Whether the Standing Orders Act provides any remedy. The only relevant section of that Act is section 13A which provides that if any question arises as to the application or interpretation of a Standing Order certified under that Act, any employer or workman may refer the question to any of the Labour Courts constituted under the I.D. Act and specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazettee and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.”

11. Further in the case of **Rajasthan State Road Transport Corporation and another etc., vs. Krishna Kant etc. etc.** (AIR 1995 SC 1715) the Supreme Court in paragraph 32(4)(6) of judgment, held as follows:-

“32(4) (6). We may now summarise the principles flowing from the above discussion:

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to “statutory provisions”. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.”(Underlining Mine).

12. On my finding that the petitioner has alternative efficacious remedy under the Industrial Disputes Act, jurisdiction under Article 226 of the Constitution is not fit to be exercised and on that account alone I am not inclined to

enter into the merits of the case. Further in my opinion, in case respondent-Corporation in some of the cases had not taken this plea, same shall not preclude it from taking this plea in the present case. Petitioner, if so advised, may take recourse to the remedy available to him under the Act.”

this writ application is held to be not maintainable and is, accordingly, dismissed.

The dismissal of this writ application however will not stand in the way of the petitioner in taking recourse/remedy under Industrial Disputes Act and the Labour Court shall decide the issue afresh now in the light of the evidence adduced by the parties without being influenced by anything said in the present order or earlier order passed by this Court in C.W.J.C No. 10859 of 2013 disposed of on 03.01.2014.

(Mihir Kumar Jha, J)

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