

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2451 of 2012

Along with

Interlocutory Application No. 2067 of 2016

Shiv Shankar Yadav S/O Late Jageshwar Yadav R/O Village- Bhikhabandh, P.O.-
Satjora, Police Station- Daraunda, District- Siwan, Retired While Working As
Chaukidar In Daraunda Police Station - Siwan, Block- Daraunda, District- Siwan

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Home (Police) Department, Government Of Bihar, Patna
3. The Director General Of Police, Bihar, Patna
4. The Inspector General Of Police, Muzaffarpur Zone, Muzaffarpur
5. The Deputy Inspector General Of Police, Saran Range, At Chapra
6. The District Magistrate, Siwan
7. The Superintendent Of Police, Siwan
8. The Sub-Divisional Officer, Siwan
9. The Circle Officer, Daraunda, District- Siwan

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate

For the Respondent/s : Mr. Sanjeev Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 01-07-2016

Heard learned counsel for the parties.

Re. Interlocutory Application No. 2067 of 2016

The present Interlocutory Application has been filed seeking substitution of the sole petitioner by his son, Mahesh Yadav, whose details have been mentioned in paragraph-3 of the application.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, let the sole petitioner be substituted by his son, Mahesh Yadav, whose details have been mentioned in paragraph-3 of the Interlocutory Application.

Accordingly, Interlocutory Application No. 2067 of 2016 stands disposed off.

Re. Civil Writ Jurisdiction Case No. 2451 of 2012

The writ petition is directed against the order dated 15.04.2011 issued by the District Magistrate, Siwan by which there is order for recovery of salary of 15 months which is alleged to have been the period for which the petitioner has worked beyond his date of superannuation.

The petitioner while working as a Chowkidar, the Government came out with the scheme under which persons who had not completed 50 years of age as on 31.12.1989, became government servant. The petitioner deriving such benefit, was regularized on the post of Chowkidar as a government employee. Since there was no document showing the date of birth, a Medical Board was constituted by which the petitioner, along with many other persons, were examined on 15.06.1996 and as per the report, his age was assessed as 55 years. Accordingly, in view of the age of superannuation, as it existed then, upon attaining 58 years was to superannuate with effect from 15.06.1999. It appears that he continued to be in service till September, 2000, for which he was also paid. The authorities having realized their mistake finally made him retire with effect from 15.06.1999 and it was further ordered that the salary drawn by him for



extra 15 months be recovered. As a corollary, since going by the actual date of retirement, the petitioner would not have completed 10 years in government service under the Bihar Pension Rules, 1950, he was held disentitled to any pension. The petitioner has challenged both the recovery as well as grant of pension to him.

Learned counsel for the petitioner submits that, after his appearance before the Medical Board on 15.06.1996, he was never served the copy of the report of the Medical Board. It is further submitted that the petitioner continued in service till September, 2000, without there being any misrepresentation or laches on his part and, thus, there could be no recovery from him. It is further submitted that the grant of pension, which is a welfare scheme by the State Government for its employees, the petitioner on a very technical ground of his date of birth having been assessed by the Medical Board, such benefit should be given to him, moreso since he actually continued in service.

Learned counsel for the State submits that the petitioner having appeared before the Board on 15.06.1996, cannot be said to be ignorant of his age having been assessed since he continued in service after that and even if there was no formal communication, there being no requirement of the same, it was incumbent upon the petitioner to have been vigilant, and he is precluded from taking the plea that he

was not aware of the fixing of his date of birth by the Medical Board. It is further submitted that the payment having been made to the petitioner beyond the date of superannuation, being from public exchequer, the same cannot be fettered away and, thus, the petitioner cannot be entitled to any pension.

Having considered the rival contentions, the Court cannot sustain the recovery from the petitioner. The law has been settled in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334**. The petitioner having continued in service without any misrepresentation and was also paid salary, and moreover there being no dispute that he discharged his duty, such recovery cannot be made and accordingly the direction to recover salary paid to the original writ petitioner stands quashed.

Coming to the point as to whether the petitioner can be beneficiary of pension, the Court may be sympathetic towards his cause, but the fact that the law did not permit such payment of pension without 10 years of qualifying service has to be in the eyes of law and not to the particular period for which the petitioner may have continued on the basis of the authorities not being vigilant. The Court, thus, cannot come to the rescue of the petitioner on any sympathetic ground as the pension is paid from public money, which has to be spent only in accordance with law and to person(s) who are

entitled in law under the relevant Rules. The relevant Rules in the present context is the Bihar Pension Rules, under which the minimum qualifying period is 10 years under the State employment for grant of pension and admittedly the petitioner not having fulfilled the minimum criteria of having worked for 10 years under the State, in the eyes of law, the relief prayed for, to grant pension, cannot be acceded to. Moreover, as the writ court is a court of equity also, there may be some force in the argument of learned counsel for the petitioner. But, since as of today, the original beneficiary being no more alive and the son having been substituted in the present writ petition and the Court having held that the petitioner was not entitled to pension in law, such prayer is rejected.

Accordingly, the writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Anjani/-

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