

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1972 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 10644 of 2008

Along with

Interlocutory Application No. 8758 of 2015

In

Letters Patent Appeal No. 1972 of 2015

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1. Ramdeo Yadav, Son of Ramtahal Yadav, Resident of Village- Parawan, P.S.- Ghoshi, District- Jehanabad.
 2. Hulash Paswan, son of Late Khanu Paswan, Resident of Village- Chhabauna, P.S.- Ghoshi, District- Jehanabad.
 3. Ramlakhan Gope, son of Late Govind Gope, Resident of village- Laxmipur, P.S.- Ghoshi, District- Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Collector, Jehanabad.
3. The Anchal Adhikari Ghoshi, Jehanabad.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arvind Kumar, Advocate.
For the State	:	Mr. Chittranjan Sinha, PAAG-2
		Ms. Ratna Kumari, AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 06-09-2016

Heard learned counsel for the parties.

2. The challenge in the present intra Court appeal is to the order dated 12.08.2015 passed by the learned Singe Bench by which C.W.J.C. No. 10644 of 2008 filed by the appellants has been dismissed.

3. The appellants were Chaukidars and with effect from 01.01.1990 became Government servants in terms of the policy of the



State Government. As they did not have any approved or recognized certificate with regard to the date of birth like Matriculation/ birth certificate, they were subjected to medical examination on 24.03.1990 and as per the report they were found to be aged 45 years. However, in the service book of appellant no. 1, his date of birth was recorded as 01.04.1948, appellant no. 2 as 09.11.1947 and appellant no. 3 as 19.12.1953. The service books were filled up on 25.12.1985, 25.12.1985 and 26.08.1989 respectively. The authorities have declared them to have retired with effect from 31.03.2003 in view of the medical certificate on their being deemed to have attained the age of superannuation of 58 years, as it then was. The appellants being aggrieved moved this Court in C.W.J.C. No. 10644 of 2008 and dismissal of the same by the learned Single Bench on 12.08.2015 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellants submitted that once a date of birth has been recorded in the service book, that should have been given primacy and they being made to superannuate without having reached the age of superannuation as per the entry in the service book, is arbitrary and requires to be interfered with. It was further submitted that the medical examination relating to age could not have altered the situation to their disadvantage and the authorities were bound to accept the date of birth recorded in their service book.

5. Learned counsel for the State submitted that the



appellants were made to superannuate with effect from 31.03.2003 based on the medical report relating to age, which is the acceptable mode in case where there is no reliable document relating to age.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The appellants are basing their case on the entry made in the service book prior to them becoming Government servant with effect from 01.01.1990. Thus, once their character and nature of job changed, the necessity of recording of date of birth as per the norms set out by the State Government was required. There being no legal or valid basis for the entry in the service book prior to them becoming Government servant, the authorities had taken the right step of getting them medically examined on 29.04.2003. As per the said report, the appellants were aged 45 years. Thus, for all practical purposes, the said estimation of age by the doctor became the basis in law for determining their age relating to their service. Once the same was done, the appellants had the discretion to assail the finding of the doctor relating to their age but they chose not to do so. Thus, once after becoming Government servants, their age has been determined by a doctor, any entry which may have been made prior to their becoming Government servant and that too, without being based on any Matriculation/birth certificate, in terms of the relevant statutory provision, the age determined by the doctor has to be taken as correct and has to be reckoned with regard to



the service of a Government servant. In the present case, it is not the stand of the appellants that they were not made aware of the medical examination report and the same could not have been argued also for the reason that they had been subjected to medical examination and thus, were aware that a report was to be given pursuant to such examination. In such background, there is a natural and obvious presumption that the appellants had accepted their age as determined by the doctor way back in March, 1990 i.e., soon after they became Government servants. Such being the position, the authorities have rightly made the appellants superannuate with effect from 31.03.2003.

7. In view thereof, we do not find any error in the order passed by the learned Single Bench or the authorities which may warrant interference in the present Letters Patent Appeal which, accordingly, stands dismissed.

8. Interlocutory Application No. 8758 of 2015 stands disposed off.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar

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