

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7304 of 2007

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Rameshwar Das, son of late Punit Das, resident of village Gopalpur, P.S. Cheria
Bariarpur, District Begusarai

.... Petitioner

Versus

1. The Bihar School Examination Board, through its Chairman, Patna, Bihar
2. The Chairman, Bihar School Examination Board, Patna, Bihar
3. The Secretary, Bihar School Examination Board, Patna
4. The Enquiry Officer, Shri S.K.Sinha, Joint Secretary (Retired) Education
Department, Patna
5. The Dy. Secretary, Bihar School Examination Board, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-11-2016

Heard Mr. Purushottam Kumar Jha, learned counsel
appearing on behalf of the petitioner and Mr. Girijesh Kumar, learned
counsel appearing for the Bihar School Examination Board.

2. The petitioner is aggrieved by the order bearing Memo
No. 961 dated 26.2.2007 issued under the signature of the Chairman,
Bihar School Examination Board, whereby the petitioner has been
dismissed from service. A copy of the order of dismissal is impugned
at Annexure 16 to the writ petition.

3. The facts of the case lie in a very narrow compass. The
petitioner was appointed against the post of Calligraphist Assistant
vide order placed at Annexure 1, which is dated 19.5.1970. It is



practically at the verge of retirement of the petitioner that the disciplinary proceeding in question was initiated against him charging him with interpolation of records to benefit one Raj Kishore Prasad by interpolating his date of birth to read as 10.5.1955 in place of the original date of birth 10.5.1951. A copy of the charge memo dated 6.6.2006 is impugned at Annexure 2 and the petitioner by the said time had been promoted to the post of Section Officer. The enquiry report is impugned at Annexure 9, which was submitted on 13.11.2006 by the Enquiry Officer cum Joint Director, upholding the guilt. The opinion of the Enquiry Officer is based upon the three member enquiry report taken note of in the enquiry report. The petitioner was put to notice against the enquiry report. An exhaustive reply was filed by the petitioner present at Annexure 11, which has not satisfied the disciplinary authority, who has passed the impugned order of dismissal as communicated to the petitioner vide memo bearing No. 961 dated 26.2.2007 impugned at Annexure 16. The petitioner feeling aggrieved with the said order is before this Court. The petitioner has since superannuated on 31st January, 2009.

4. Apart from questioning the allegations as well as enquiry on merits, the following issues raised by Mr. Jha are by itself sufficient to allow the writ petition. The issue raised by Mr. Jha are:

(a) Even when the disciplinary proceeding was initiated for

imposition of major penalty, no presenting officer was appointed, which has vitiated the proceeding.

(b) Even on merits the allegation of interpolation is not sustainable in view of the fact that a certificate in the name of Raj Kishore Prasad recording his date of birth as 10.5.1955, had already been issued in the signature of the Secretary as back as in December, 1969 and which is confirmed from the certificate present at Annexures 13 series at page 73 with a more legible copy appearing at Annexure 18 of the rejoinder at running page 136 of the proceeding. It is contended that this certificate was issued in and around December, 1969 on the basis of original tabulation register (hereinafter referred to as 'O.T.R.') and a copy of which again forms part of Annexure 13 series at page 75, where the name of the said Raj Kishore Prasad appears at serial No. 741 and a change in the date of birth to 10.5.1955 is already incorporated. According to Mr. Jha, the two documents do confirm that the original O.T.R. already stood corrected to read as 10.5.1955 on or before December, 1969 and it is on the basis of correction made in the tabulation register that the certificate present at Annexures 13 series at page 73 as well as at page 136 was issued, which is dated December, 1969.

(c) The petitioner having joined the service in May, 1970 i.e. after issuance of the certificate present at page 73/ 136 which



records the date of birth of Raj Kishore Prasad as 10.5.1955, the subsequent certificate issued on 29.4.2005 issued under the signature of a person, other than the petitioner, neither any infirmity can be attached therewith nor the petitioner can be charged with any interpolation for any such correction had already taken place prior to December, 1969.

5. Although Mr. Girijesh Kumar has tried best to contest the argument of Mr. Jha by referring to the enquiry report present at Annexure 9 but unfortunately the enquiry report is silent on the issue so raised by the petitioner not only in paragraph 27 of the writ petition but also in paragraph 5 of the rejoinder to the counter affidavit. Mr. Girijesh Kumar has also tried to object to the reliance made by the petitioner on the two certificates present at page 73 and again at page 136, by submitting that these certificates should have been led by the petitioner during the course of enquiry. In my opinion, the documents relied upon by the petitioner, is issued by the Board and although this matter is taken up for final adjudication after lapse of almost nine years, since its filing and even though a counter affidavit has been filed by the Board but no objection has been raised by the Board to the certificate dated December, 1969, a copy of which is present at page 73 of the writ petition.

6. Mr. Girijesh Kumar has next referred to the finding of the



Enquiry Officer recorded at paragraph 5(2) and 5(5) to submit that the said Raj Kishore Prasad had appeared in the Matriculation Examination twice, once in 1966 and again in 1967 and although the tabulation register of the year 1966 yet maintains the date of birth as 10.5.1951 but the tabulation register for the examination of 1967 has been modified to read as 10.5.1955. He, thus, endeavours to submit that there is discrepancy as regarding date of birth of the said Raj Kishore Prasad recorded in the Examination Board.

7. I am surprised that even when these are allegations which are to be answered either by the candidate himself or the Board and the very fact that the tabulation register of the examination held in the year 1967 was modified to read the date of birth as 10.5.1955 and on that basis a certificate was issued in December, 1969 recording the date of birth again as 10.5.1955, the petitioner having joined service in 1970, should not have been subjected to any enquiry. In fact in these uncontested circumstances, the issuance of a certificate in 2005 with a date of birth of 10.5.1955, can neither be a ground to impute misconduct against the petitioner nor the petitioner having joined service in May, 1970 i.e. after issuance of the certificate in December, 1969 having a date of birth of 10.5.1955, could be charged with any modification in the date of birth.

8. For the reasons aforementioned, the disciplinary proceeding including the final order of dismissal passed against the petitioner can neither be sustained in absence of the presenting officer nor can be sustained on merits, in absence of definite evidence connecting the petitioner with the alleged offence.

9. In the result, the order of dismissal issued vide Memo No. 961 dated 26.2.2007 cannot be upheld and is, accordingly, quashed and set aside.

10. Since the petitioner has already superannuated in the meanwhile, he shall be entitled to all consequential benefits viz payment of 50% of salary admissible to him until the date of superannuation as well as the post retirement benefit admissible to him, which should be provided within a period of three months from the date of receipt/ production of a copy of this order.

11. The writ petition is allowed. Interlocutory application is, accordingly, disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2016
Transmission Date	NA