

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12530 of 2013

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1. Ram Pravesh Prasad Son Of Sri Karmu Mahto Resident Of Village - Madhopur,
Police Station - Maner, District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director General-Cum-Maha Samadesta, Bihar Home Guard Mukhayalaya,
Bihar, Patna
3. The Up Maha Samadesta, Bihar Home Guard Mukhayalaya, Bihar, Patna
4. The Samadesta, Bihar Home Guard Mukhayalaya, Bihar, Patna
5. The Samadesta, Bihar Home Guard , Central Training Institute, Bihta, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Tiwary, Advocate.

For the State : Mr. Durgesh Nandan, AAG 14

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-12-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present case the dispute is with regard to date of
birth recorded in the service book and premature superannuation
of the petitioner.

The petitioner was enrolled as the member of the Home
Guard on 26.11.1971 for the training and later on he was
appointed as constable on 15.2.1975 as he was found fit for the
aforesaid post and accordingly his date of birth has been
recorded as 11.10.1953 in the words and figure. He continued to
discharge the duty and all on a sudden he received a show cause
from the Commandant vide Memo No.782 dated 13.3.2012



recording therein that he has entered into Home Guard on 5.11.1971 and at the time of entrance his age must not be less than 19 years, treating the age of 19 years as on 5.11.1971 his date of birth has been fixed as 1.1.1952, not 11.10.1953 as he could not entered in the Home Guard below the age of 19 years.

The petitioner gave his reply taking plea that at the time of entering into service his age was assessed and same was recorded as 11.10.1953. No allegation of interpolation has been imputed against him, after lapse of 30 years change of date of birth in the service book indicates arbitrary exercise of power. But the respondent after giving him show cause treated his date of birth as 1.1.1952, vide letter dated 11.6.2012 of Commandant, superannuated the petitioner from service with effect from 31.12.2011. The order has been passed by the Commandant vide letter dated 11.6.2012 treating the date of birth of the petitioner as 1.1.1952 on the speculation that the petitioner could not have entered into Home Guard below the age of 19 years.

Learned counsel for the petitioner submits that the principle for change of date of birth which applies to the employee will equally applicable to the employer as the employee cannot claim alteration of date of birth at the fag end of his career and equally the same scale would be applicable



with the employer also, they cannot claim the change of date of birth at the end of service career only on the basis of speculation that he could not enter into service before 19 years.

Today a supplementary counter affidavit has been filed by the State by which report of three men committee has been brought on record and from there it appears that altogether conspicuously the date of birth with respect to ten persons has been decided, after deliberation their date of birth and age has been determined.

Learned counsel for the petitioner has placed reliance on the judgment of two Single Judges and one Division Bench judgment in the case of Om Prakash Pandit v. The State of Bihar & others (C.W.J.C. No.18497 of 2010) and Madhusudan Sharma v. The State of Bihar & others (C.W.J.C. No.1879 of 1997) including the judgment of Division Bench in the case of Awadh Narain Singh v. The State of Bihar & others, reported in 2002(1) PLJR 567 and in the case of Devi Dayal Giri vs. The State of Bihar & others, reported in 2006(3) PLJR 362. In both the cases it has been laid down that even if there may be some misrepresentation but if he continued for years together, at the end of the career, the date of birth cannot be allowed to be changed by the employer. In a case of fraud different yardstick will be applicable as fraud vitiates everything at any stage and



employer would be at liberty to correct the date of birth. Neither in the proceeding of the three men committee nor in the counter affidavit there is any whisper that any fraud has been played by the petitioner rather only plea has been taken that he could not have entered into Home Guard below the age of 19 years and on that basis his age has been calculated and has been fixed on 1.1.1952 but it has to be seen the Home Guard is volunteer organization which has been created under the Home Guard Act, 1947 and the persons who are performing the job of Home Guard cannot be treated to be neither police force nor the employee of the State Government but their services are taken for rendering certain job. In the event of emergency, the persons who have been enrolled as Home Guard are called for the particular purposes and they are paid the remuneration according to the duties he performed. He would not be paid remuneration for the day he has not discharged the duty. It only provides that when Home Guards are called they worked under the Commandant and they will act as per the direction of the Commandant under whom they are under administrative control.

State has placed reliance on the judgment of the Single Judge passed in the case of Vijay Kumar Singh v. The State of Bihar & others (C.W.J.C. No.13631 of 2013) and Baikunth Nath Khare v. The State of Bihar & others (9771 of 2000) and both



judgments are based on the principle that the person cannot enter into Home Guard for training below the aged of 19 years and that was the factor for consideration of age of person but in the present case the State has not produced any record of the Home Guard to show that age which has been recorded in the Home Guard was supplied by the petitioner but age recorded in words and letter in service book is without cutting and over writing and the State has nowhere taken the plea that the age has been recorded on account of misrepresentation or by fraud committed by the petitioner. The Division Bench has held, even if the age has been recorded on the misrepresentation but it continued years together then in that circumstance at the fag end of service it will not be proper for the employer to change the date of birth merely by giving the notice upon him. The two judgments which have been placed by the State has not considered the earlier Division Bench of this Court. In such view of the matter, the judgment of the Single Judge which has not been considered earlier Division Bench cannot be placed on reliance, and is not binding on this Court.

In such view of the matter, placing reliance on Division Bench judgment, after lapse of 30 years merely giving show cause, on the basis of speculation that he cannot enter into service in Home Guard below the aged of 19 years cannot be the



basis for determination of age but it will be decided on the basis of age recorded in the service book where there is no cutting and over-writing.

In such view of the matter, impugned order dated 11.6.2012 is set aside. The date of birth of the petitioner will be treated as 11.10.1953 which is recorded in the service book and he will be entitled for 75% salary for the period he has been made to retire illegally, accordingly respondent will fix the pensionary benefit treating the date of birth of the petitioner as recorded in the service book.

With the aforesaid observation this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.1.2017
Transmission Date	NA

