

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9430 of 2008

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Buddha Deo Dubey, son of Late Kapil Dubey, resident of village Dhangain Post-Keshri, District- Bhojpur , Purv Pump Chalak, Public Health (Mechanical) Sub - Division Aara

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Bhojpur, Ara
3. The Executive Engineer, Public Health, Mechanical Division, Sasaram (Rohtas)
4. The Assistant Engineer, Public Health , Mechanical Sub -Division, Bhojpur, Aara

.... Respondent/s

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Appearance :

For the Petitioner/s : Sri Narayan Singh

For the Respondent/s : Sri Anil Kumar Singh GP – 26

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 10-04-2017

1. Heard Sri Narayan Sngh, learned senior counsel, assisted by Sri Bhim Sen Prasad, learned counsel for the petitioner and Sri Anil Kumar Singh, learned GP No. 26.

2. The petitioner, has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India , against an order dated 27.2.2007 contained in Memo No. 190 issued under the signature of Executive Engineer, Public Health, Mechanical Division, Sasaram (Rohtas). By the said communication the petitioner was informed regarding his date of birth as 20.4.1947 and as such he was intimated about his date of retirement as 30.4.2007. It was claimed that since the age of petitioner was determined by a duly constituted medical board which was in between 55 and 60 years, the



petitioner was required to be given the benefit of lesser age. As per lesser age his date of birth was to be recorded as 19.10.1951 and as such , he was to superannuate on 20.10.2011.

3. As pleaded the petitioner joined the government job as Pump Khalashi , Grade -II on 1.1.1968 but in the service book date of birth was not recorded. Much belatedly it was noticed that in the service book date of birth of the petitioner or age was not recorded, then the Executive Engineer, Public Health , Mechanical Division , Sasaram requested the Civil Surgeon, Aara to determine the age of the petitioner vide letter no. 692 dated 24.8.2006 (Annexure '1' to the writ petition). As per petition he was examined by the medical board and finally medical board in its report dated 20.10.2006 determined the age of the petitioner in between 55 and 60 years (Annexure '2' to the writ petition). Subsequently , by memo no. 190 dated 27.2.2007 (Annexure '3' to the writ petition) the Executive Engineer informed the petitioner that his date of birth was 20.4.1947 and consequently he will be superannuating with effect from 30.4.2007. He was requested to complete the formalities in respect of his pension.

4. Sri Narayan Singh, learned senior counsel, submits that in such cases there are number of judgments of this court, which suggest that benefit of lesser age should be given to an employee on the basis of report of medical board. He has firstly placed reliance on



a Division Bench judgment of this court reported in **2000 (3) PLJR 65 (Bihar Electricity Board vs. Bihar Powers Workers Union & others)**. He submits that Division Bench had held that in case of report of medical board the benefit of lesser age is to be given to the employee. Even the Division Bench had gone to the extent of directing the Bihar State Electricity Board to amend its circular for granting such benefit to the employee. Learned counsel for the petitioner has also placed reliance on **2007 (2)PLJR 727 (Paras Nath Srivastava @ Paras Nath Prasad vs. The Bihar State Electricity Board & Ors.)** and he has referred to paragraph no. 7 of the judgment of Single Bench, which is quoted hereinbelow:-

“7. This Court in view of the above decision of the Division Bench comes to a conclusion that the Electricity Board has committed an error by superannuating the petitioner by taking an average age determined by the Medical Board. The Medical Board has determined the age of the petitioner between 53-55 years in the year 2000 and the average age was taken to be 54 years. This in the view of this Court, as well as in view of the judgment of the Division Bench in the case of **Bihar Electricity Board vs. Bihar Power Workers Union & Ors.** (supra) was an error committed by the Electricity Board. The benefit of lesser age that is 53 years on the date of determination should have been given to the petitioner and not the average age which has been done in the case of the petitioner. In that view of the matter, the petitioner's age should be recorded as 53 years on the date of determination and consequently his date of retirement / superannuation should be re-



worked out by the Board. The petitioner's retirement shall accordingly be extended by one year, in view of the lesser age and all consequential benefits due to re-determination of his date of superannuation shall be granted to him within the time filed by this Court which should not be later than three months from the date of receipt / production of a copy of this order. If the petitioner has still some service left then he shall be taken back in service and he shall be paid all benefits which accrues to him as if he never superannuated from service."

5. Learned senior counsel has also placed reliance on one another judgment of Single Bench reported **2013 (1) PLJR 22 (Ashok Kumar @ Ashok Prasad vs. Bihar State Road Transport Corporation, Patna through Administrator, Bihar State Road Transport Corporation, Patna & Ors.)** . Taking aid of the aforesaid judgments learned senior counsel for the petitioner submits that since issue in the matter has already been set at rest, the petitioner was entitled to get benefit of his lesser age as indicated in the medical board report (Annexure '2' to the writ petition) i.e. 55 years on the date of his examination by the medical board , and as such , his date of birth was required to be recorded as 19.10.1951 and petitioner was required to superannuate on that effect from 20.10.2011. He submits that the writ petition is fit to be allowed with all consequential benefits.



6. Sri Anil Kumar Singh, learned GP No. 26 has raised preliminary objection on the point that the writ petition was filed after more than one year from the date of his retirement. By way of issuance of notice to the petitioner i.e. Annexure '3' dated 27.2.2007 to the petition he was intimated to complete formalities for his pension since he was to superannuate with effect from 30.4.2007. He further submits that though the medical board had suggested the age of the petitioner in between 55 – 60 years, the average age of the petitioner was considered and treating his age as 57 years on the date of medical board his date of birth was recorded as 20.4.1947 in his service book and as per his date of birth recorded subsequently in the service book he was to superannuate with effect from 30.4.2007. He has argued that after issuance of Annexure '3' i.e. Memo No. 190 dated 27.2.2007 the petitioner was superannuated with effect from 30.4.2007. He has further referred to the statement made in paragraph no. 6 of the counter affidavit which was filed on 18th December , 2008 that after submission of pension paper petitioner was authorized pension and he started to receive pension also. According to learned counsel for the state after notice which was issued in the month of February , 2007 whereby he was intimated about his date of retirement as 30.4.2007 no objection was raised by the petitioner and he submitted pension paper and after more than one year from his



retirement the petitioner filed the present writ petition. By way of referring to the statement made in paragraph no. 9 of the supplementary counter affidavit a specific stand has been taken that if lesser age of the petitioner was accepted then at the time of appointment his age was 16 years and as such, he was not eligible to be appointed being not major. Sri Singh , learned state counsel, has placed reliance on a judgment of this Court reported in **2015 (2) PLJR 308 (Bhola Prasad Singh vs. The State of Bihar through its Chief Secretary & Ors.)**. He has specifically placed reliance on paragraph no. 10 of the judgment, which are quoted herein below:-

“10. The Full Bench, not only referred to the relevant provisions of the Pension Code, but also to the Circulars, as well as, the general principles pertaining to the eligibility or capacity to contract. The cases of the two appellants therein were demonstrated with reference to the relevant dates. Ultimately, their lordships held that the person can enter into service only on completion of 18 years of age, and the date of retirement can be reckoned only by taking into account the date of entry into service, on attaining majority. The said approach totally accords with the common law of contract as well as the public policy. A citizen cannot be allowed to plead that he entered into service when he was aged 13 years and he is entitled to remain in service for decades together on the basis of a totally unverified date of birth. In the instant case ,the learned Single Judge made elaborate comments about the failure or refusal on the part of the petitioner to place the Matriculation certificate to verify his date of



birth.”

7. According to learned state counsel his date of birth was correctly recorded in the service book as average age between 55 years and 60 years as assessed by the medical board, and as such , treating his age on the date of examination by the medical board it was considered as 57 years and accordingly the date of birth of the petitioner was correctly recorded in the service book as 20.4.1947.

8. Besides hearing learned counsel for the parties , I have perused the materials available on record. It is true that repeatedly this court has held that in case of age being determined on the basis of report of the medical board benefit of lesser age should be granted to the employee, but at the same time, this court may not shut its eyes that if on giving benefit of lesser age a fact comes to the notice of this court that on the date of appointment he was not major, then certainly in such cases, average age by the medical board may be considered as just and proper. Moreover, in the present writ petition though petitioner had challenged the communication dated 27.2.2007 (Annexure ‘3’ to the writ petition) whereby he was intimated regarding his date of birth and completing formalities in respect of his pension, the petitioner earlier did not raise any objection but proceeded for completing formality regarding his retiral dues. He



superannuated as per the date of birth recorded on the basis of report of the medical board and after lapse of about one year he filed the present writ petition. It is also not in dispute that if the age as claimed by the petitioner is accepted, on the date of appointment / date of his entry in the service he was about 16 years. The Hon’ble Court in Bhola Prasad Singh Case (Supra) has rightly considered that no one can be appointed before attaining the age of 18 years in the government job. In view of the facts and circumstances particularly the fact that petitioner on the basis of average date of birth was intimated the date of his retirement and he superannuated with effect from 30.4.2007 and one year thereafter he had filed the present writ petition, the court is not inclined to pass any favourable order.

9. The writ petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-04-2017
Transmission Date	NA

