

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14959 of 2008

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Md. Iftakhar Ahmad, aged about 67 years, son of Late Md. Mustaque Ahmad, resident of Mohalla – Bhawdeypur, Ward No. 21, P.S. – Sitamarhi, District – Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Director General-cum-Inspector General of Police, Bihar, Patna.
3. The Zonal Inspector General of Police, Darbhanga Zone, Darbhanga.
4. The Range Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
5. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
6. The Assistant Inspector General of Police (Welfare), Bihar, Patna.
7. The Superintendent of Police, Madhubani.
8. The Senior Superintendent of Police, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shitanshu Shekhar Mishra, Adv.

For the Respondent/s : Mr. Ajay Kumar Sharma, AC to PAAG-I

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 05-05-2017

Heard Sri Shitanshu Shekhar Mishra, learned counsel for the petitioner and Sri Ajay Kumar Sharma, learned A.C. to Principal Addl. Advocate General – I.

2. The petitioner, who was initially appointed on 01-09-1963 as Constable and in service book his date-of-birth was recorded as 26-08-1941 and according to which, he was to superannuate on 01-09-1999, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash an order, contained in Memo No. 2281/P2 dated 01-06-2005 issued under the signature of Deputy Inspector General of Police (Personnel), Bihar, Patna (**Annexure – 12** to the writ petition).



By the said order, the representation filed by the petitioner, in compliance with order dated 15-10-2004 passed in C.W.J.C. No. 7677 of 1999, was rejected.

3. It is case of the petitioner that though, as per Matriculation Certificate, his date-of-birth was 08-01-1943, in the service book, it was incorrectly mentioned, as 26-08-1941. The petitioner was initially appointed as Constable and for the first time, in the year 1991, he examined his service book and thereafter, noticed that in the service book, his date-of-birth was incorrectly recorded. Thereafter, he raised objection, however; the objection was not entertained. Finally, on his objection in the year 1998, which was supported with the Matriculation certificate, the complaint of the petitioner was thoroughly enquired by the Deputy Superintendent of Police, who submitted his report to the Superintendent of Police, Madhubani, Darbhanga. After examining the report of the Dy. Superintendent of Police, which corroborated the allegation of the petitioner that incorrectly in the service book, his date-of-birth was recorded, as 26-08-1941 instead of 08-01-1943, the Superintendent of Police, Madhubani, vide its Memo No. 4266/Confidential (**Annexure - 7** to the writ petition), requested the Assistant Inspector General of Police (Welfare) to take step for correcting the date-of-birth in the service book of the petitioner. It has been reiterated that on objection, the matter was thoroughly enquired and even the enquiry officer had



visited the concerned school to verify the school record to ascertain the date-of-birth as well as the matter was examined from the office of the Bihar School Examination Board. In all the enquiry, it was found that the date-of-birth, as per Matriculation Certificate of the petitioner, was 08-01-1943. It is not in dispute that as per photocopy of the Matriculation certificate i.e. **Annexure - 1** to the present petition, the petitioner had passed Matriculation Examination, which was held in the month of March, 1959 and in the Matriculation Certificate, his date-of-birth was recorded as 8th January, 1943. Since, even after the recommendation by the Superintendent of Police, vide **Annexure - 7** to the writ petition, the claim of the petitioner was not considered positively, the petitioner approached this Court by filing a writ petition, vide C.W.J.C. No. 7677 of 1999 (**Annexure - 11** to the writ petition). It has been argued that though the writ petition was filed in the year 1999, from the respondent/State, no counter affidavit was filed and in absence of counter affidavit, a Bench of this Court, vide its order dated 15-10-2004, disposed of the writ petition granting liberty to the petitioner to file a fresh representation before the Inspector General of Police i.e. respondent no. 2 of the said writ petition and issued following direction:-

“In the event that the respondent no. 2 is satisfied of the recording of the factual contents in the departmental confidential letter dated 26-09-1998 at Annexure - 5 hereinabove it is expected that the retirement dues of the petitioner,



who has retired on 01-09-1991 shall be ascertained and refixed on the basis of his date of retirement which would have accrued on 28-08-2001.”

Meaning thereby that this Court had directed the respondent no. 2 to examine the case of the petitioner, in the light of Annexure – 5 of the said writ petition, which has been brought on record, as Annexure – 7 to the writ petition. The date-of-birth of the petitioner was 08-01-1943 and this was the reason that this Court observed that after examining, if respondent no. 2 is satisfied with the confidential letter i.e. Annexure 7 to the writ petition, the petitioner would be deemed to retire on 28-08-2001.

4. Learned counsel for the petitioner submits that ofcourse, in purported compliance of the order of the writ court, the order was passed, vide **Annexure – 12** to the writ petition, but actually, order impugned is in teeth of order passed by this Court on 15-10-2004 in C.W.J.C. No. 7677 of 1999. It has been argued that once this Court had directed to examine the confidential letter and take decision, in that event, the prayer of the petitioner, only on technicality, was not required to be rejected. He submits that the claim of the petitioner was rejected only on two counts. Firstly, it was rejected that the objection was raised by the petitioner regarding correction of his date-of-birth while he was at the fag end of his retirement and secondly, it has been noticed in the impugned order that the Home (Police) Department, Govt. of Bihar, liberalizing earlier provision, had



granted one year time for taking any step for correction in respect of date-of-birth and since petitioner had not availed that liberty, at such belated stage, his claim was not required to be entertained and accordingly, the claim of the petitioner has been rejected.

5. Sri Mishra, learned counsel for the petitioner has also referred to an order of the Apex Court passed in Civil Appeal No. 831 of 1991 dated 20th February, 1991. Copy of same has been brought on record as **Annexure 10/A** to the writ petition. He submits that Hon'ble Apex Court has already held that merely, on the ground of objection being raised belatedly, the prayer for correction of date-of-birth may not be rejected, if there is supportive document, such as; the Primary School Admission Register, the Middle School Admission Register, the High School Admission Register and the University Admission Register. He submits that the order of the Apex Court dated 20th February, 1991 was also noticed by this Court while earlier writ petition was being heard and disposed of. Learned counsel for the petitioner has also placed reliance on a Division Bench judgment of this Court, reported in **2014 (3) P.L.J.R. 746 (Tajuddin Khan vs. The State of Bihar & Ors.)** in support of his argument that once the State authority had conducted an enquiry and on enquiry, the date-of-birth recorded in the certificate was found true, then in that event, at belated stage, the correction in date-of-birth was permissible. In the same judgment, he has placed reliance, which indicates that the provision contained in Rule 96 of the



Bihar Financial Rules, 1950 is not mandatory and in appropriate cases, even after the time fixed, as per Rule, the prayer for correction of date-of-birth can be entertained. On aforesaid ground, a prayer has been made to set aside the impugned order i.e. **Annexure - 12** to the writ petition and direct the respondents to treat his date-of-birth as 08-01-1943 in his service book, instead of 26-08-1941, and grant all consequential relief.

6. In this case, counter affidavit and supplementary counter affidavit has been filed on behalf of respondent no. 7.

7. Learned A.C. to Principal Addl. Advocate General - I, opposing the prayer, has firstly placed reliance on **Annexure - A/1** to the supplementary counter affidavit, which was filed on 27th April, 2017. The **Annexure - A/1** is the extract of the service book of the petitioner. Learned State counsel has argued that the service book of the petitioner was opened while the petitioner was appointed as Constable and in the service book, in specific way, the date-of-birth was mentioned, as "26.8.41" and same was counter signed by the petitioner. He has argued that if it is accepted that petitioner was matriculate, then he was not an illiterate and after noticing everything, even the date-of-birth was recorded in the service book, he had counter signed the same. Learned State counsel has referred to statement made in paragraph nos. 8, 9 and 13 of the counter affidavit to substantiate his argument that at the time of his appointment, on opening of the service



book, the petitioner had not produced his Matriculation Certificate and as such, the date-of-birth was correctly recorded, as 26-08-1941. He has also referred to Rule 1041(A) of the Bihar Police Manual and submits that as per the Rule of Police Manual, the Rule prescribed in Bihar Financial Rules i.e. Rule 96 of the Bihar Financial Rules, 1950 was applicable and the said Rule categorically states that no objection can be raised after expiry of 10 years from the date of opening of service book. He submits that the petitioner was appointed in the year 1963 and even after it is accepted that petitioner had raised objection, for the first time, that was raised in the year 1991, and record suggests that he had raised objection in the year 1998 and thereafter, in compliance with the order of this Court, the respondent no. 2 has rightly rejected the claim of the petitioner regarding correction of date-of-birth.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In normal course, after expiry of 10 years, there was no reason to entertain any application for correction of date-of-birth, in view of provision contained under Rule 96 of the Bihar Financial Rules, 1950, but in the present case, earlier there was direction of this Court, vide order dated 15-10-2004 in C.W.J.C. No. 7677 of 1999. Once this Court, after noticing all the facts, had directed the respondents to consider the case of the petitioner and also examine the confidential letter i.e. **Annexure – 7** to the present



writ petition, then in that event, the respondent no. 2 was not authorized to deviate from the direction of this Court. On perusal of the impugned order, it is evident that the respondent no. 2 had not at all discussed as to whether confidential letter i.e. **Annexure – 7** to the writ petition was correct or incorrect. Fact remains that **Annexure – 7** was issued after obtaining a detailed report from the competent officer, who had conducted enquiry at different places and he found that the date-of-birth in the Matriculation Certificate was correct which was also supported by the Bihar School Examination Board during enquiry. Once there was specific direction to examine the representation in a particular manner, then in that event, the respondent, while considering the representation, was not at all authorized to deviate from the said direction. Moreover, in **Tajuddin Khan's case (supra)**, a Division Bench has already held that Rule 96 of the Bihar Financial Rules, 1950 is not mandatory. At this juncture, it would be appropriate to quote paragraph 15, 18 and 19 of the said judgment, which are quoted hereinbelow:-

“15. In the backdrop of the above facts, we are of the view that merely because the service book mentions the date of birth of the present appellant as 1.1.1951 and not 1.1.1953, his date of birth ought not to have been treated as 1.1.1951, especially, when the Superintendent of Police, Saran, had himself given an opportunity to the appellant to appear with necessary papers/documents in support of the appellant's claim that his date of birth is 1.1.1953



and the appellant had produced the certificate from the Principal of the School, where the appellant had, admittedly, studied treating his date of birth as 1.1.1951.

18. However, it has been the consistent view of this Court that the date of birth mentioned in Rule 96 of Bihar Financial Rules, 1950, is not mandatory and, in an appropriate case, correction of the date of birth may be made even after the expiry of the period mentioned in Rule 96 of the said Rules.

19. Ordinarily, the date of birth, recorded in the Government employee's service book, cannot be changed. This does not, however, mean that in an appropriate case, date of birth of the Government employee concerned, as recorded by the competent Board, which conducts the examination, cannot be looked into for the purpose of verification. The idea behind Rule 96 of the Bihar Financial Rules, 1950, is to make a Government employee retire on reaching the date of superannuation. However, the object behind Rule 96 of Bihar Finance Rules, 1950, is not to punish a Government employee if his date of birth recorded is of a date earlier than the date of birth, which stands recorded in the relevant records of the Board or recorded in the records of the municipality concerned. A reference, in this regard, may be made to the cases of *Murli Manohar Tiwary vs. The State of Bihar and Others*, reported in 1986 P.L.J.R. 1180, and *Ram Sobhit Rai vs. The State of Bihar and Others*, reported in 1989 B.B.C.J. 141. In this regard, reference may also be made to a decision of the Division Bench of this Court in *Siyaram Singh vs.*



State of Bihar, reported in 1995(1) P.L.J.R. 691.”

9. Besides this, the order of the Apex Court in Civil Appeal No. 831 of 1991 (**Annexure – 10/A** to the writ petition) also suggests that merely on the ground that prayer for correction of date-of-birth was made belatedly, same may not be rejected, if there is admissible document to support the date-of-birth.

10. In view of facts and circumstances, particularly; the fact that there was specific direction of this Court in order dated 15-10-2004 passed in C.W.J.C. No. 7677 of 1999, the Court is of the opinion that order impugned is liable to be set aside, since it is in the teeth of the order of this Court. Moreover, it has not been contended that **Annexure – 7** was incorrect or during enquiry, it was found that certificate, which was produced by the petitioner, was not genuine. In absence of any such stand, there was no reason to not place reliance on the letter of the Superintendent of Police i.e. **Annexure – 7** to the writ petition.

11. Accordingly, the writ petition is allowed. The impugned order i.e. order, contained in Memo No. 2281/P2 dated 01-06-2005 issued under the signature of Deputy Inspector General of Police (Personnel), Bihar, Patna is, hereby set aside, with a direction to ascertain and re-fix the date-of-retirement of the petitioner on the basis of his date-of-birth, as per Matriculation Certificate i.e. 08-01-1943. According to which, he would have retired on 28-08-2001.



12. The writ petition is allowed with direction to grant all consequential benefits to the petitioner.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
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