

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3034 of 2016

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Binod Kumar Raut Son of late Rameshwar Raut Resident of At+Po+P.s- Jainagar,
thana Road, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Home, Bihar, Patna.
3. The Principal Secretary, Department of Finance, Bihar, Patna.
4. The Joint Secretary, Department of Finance, Bihar, Patna.
5. The Director General of Police, Bihar, Patna.
6. The Under Secretary, Department of Home, Bihar, Patna.
7. The Senior Superintendent of Police, Patna, Bihar.
8. Bihar School Examination Board through its Secretary.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.

Mr. Kunal Tiwary, Adv.

For the Respondent Nos.1 to 7:Mr. Sushil Kumar, G.P. 22

For the Respondent No. 8 : Mr.Amrendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-05-2017

Heard Mr. P.K. Shahi, learned Senior Counsel appearing
for the petitioner, who appears with Mr. Kunal Tiwari, Mr. Sushil
Kumar, G.P. 22 for the State and Mr. Amrendra Kumar for the Bihar
School Examination Board.

With the consent of parties this writ petition has been
heard with a view to its final disposal at the admission stage itself.

The petitioner while questioning the order dated
18.01.2016 bearing Memo No. 363, present at Annexure-1, whereby
his application for correction of the date of birth has been rejected
with reference to Rule 96 of the Bihar Financial Rules also prays for
an appropriate direction to the respondents to record his date of birth
as 20.08.1962 in place of 20.08.1958.



The fact of the case briefly stated is that the petitioner passed his matriculation examination in the year 1975. However, the matriculation certificate recorded his date of birth as 20.08.1958. The petitioner filed representation before the Secretary, Bihar School Examination Board for correction of the date of birth, but the matter remained pending and in the meanwhile, the petitioner was appointed as Sub- Inspector of Police with the State Police Force and since the matriculation certificate at the relevant time recorded the date of birth as 20.08.1958, as such the entry was made in the service book of the petitioner accordingly. The representations of the petitioner, present at Annexure-3 series and Annexure-4 series, finally got the attention of the authorities of the Bihar School Examination Board, who made appropriate correction in the date of birth of the petitioner to read as 20.08.1962 in place of 20.08.1958, as is confirmed from the certificate, present at Annexure-5. The petitioner thus, represented before the Senior Superintendent of Police, Patna for appropriate correction in the date of birth so recorded in the service book. The prayer of the petitioner was allowed by the Senior Superintendent of Police, Patna vide decision, present at Annexure-7, bearing Memo No. 21086 dated 28.12.2008. Accordingly, the date of birth of the petitioner was corrected in the service book, vide Annexure-8 to the writ petition.

For no justifiable reason that after a lapse of five years,



the petitioner received an order of the Senior Superintendent of Police, Patna, bearing Memo No. 3776 dated 17.03.2013, present at Annexure-9, wherein it was informed that in the light of the order issued by the Police Headquarter, the correction so made in the date of birth of the petitioner stands cancelled and that his date of birth shall continue to read as 20.08.1958. The petitioner filed his representation before the Director General of Police, Bihar, Patna vide Annexure-10, which has been rejected by the order bearing Memo No.363 dated 18.01.2016, relying upon Rule 96 of the Bihar Financial Rules, impugned at Annexure-1, and being aggrieved by the said order, the petitioner has filed the present writ petition.

I have heard the parties and perused the record and there is no dispute on the facts rather the only dispute is whether the petitioner was entitled for the reliefs or his case was barred under Rule 96 of the Bihar Financial Rules. Rule 96 has been a subject matter of proceedings in a number of cases since reported in *2014(3) PLJR 746 (Tajuddin Khan vs. State of Bihar)*, *2015(1) PLJR 630 (Ram Akhilesh Singh vs. State of Bihar)* and an unreported judgment in *L.P.A. No. 607 of 2015 (State of Bihar & Ors. Vs. Ram Akhilesh Singh)* and on each occasion this Court held the provision directory.

In fact, the Division Bench in the case of Tajuddin **Khan** (supra) has, in reference to Rule 96 of the Bihar Financial Rules, held in paragraph-19 that ordinarily, the date of birth, recorded in the



Service book, cannot be changed, but while observing as such, the Division Bench has also proceeded to hold that the bar is not absolute, rather it would depend from case to case.

Rule 96 of the Bihar Financial Rules inter alia grants liberty to a Government servant to alter the date of birth mentioned in the service book, but inter alia provides that no representation would be maintained after expiry of ten years of the entry made in the service book. Apart from the judgments relied upon by the counsel for the petitioner as well as the respondents, in my opinion, the period of ten years is not to be mechanically applied to reject any application, rather it is to be tested as against the cause of action giving rise to filing of such application. In so far as the present case is concerned, the date of birth of the petitioner read as 20.08.1958 when he entered in government service and since the matriculation certificate also read thus, there was no occasion for the petitioner to represent the respondents to alter the same to read as 25.08.1962 until appropriate order for correction of the date of birth was issued, by the Bihar School Examination Board. It is undisputed that such correction of the date of birth at the instance of the Board came only in the year 2008, vide Annexure-5 and it is immediately thereafter on 06.10.2008 when the petitioner represented before the Senior Superintendent of Police, Patna for correction of his date of birth in the service book and which was allowed by the Senior Superintendent of Police vide order dated



28.12.2008, vide Annexure-8. It is five years thereafter that such correction was recalled vide order dated 17.3.2013 of the Senior Superintendent of Police, Patna vide Annexure-9 and the representation against that, has been rejected vide order dated 18.1.2016 impugned at Annexure-2, which has given a cause of action to the petitioner.

The period of ten years as provided under Rule 96 thus, apart from being held directory by this Court, also has to be tested in reference to a cause of action. In so far as the present case is concerned, a cause of action for the petitioner to get his date of birth corrected in the service book would arise only when corrective steps was taken by the Bihar School Examination Board and in the present case such decision was taken by the Board only on 21.05.2008, vide Annexure-5 and whereafter, there has been no delay on the part of the petitioner who has immediately represented before the Senior Superintendent of Police, Patna for correction resulting in the orders at Annexure-7 and 8.

It is well recognized that statutory provisions have to be applied purposefully and not in a manner to defeat the very object for which it was framed.

Mr. Amarendra Kumar learned counsel appearing for the Board has put at rest all confusion prevailing by referring to paragraph 15 to 17 of the counter affidavit filed on behalf of the Board to inform



that necessary corrections have been carried out in the records of the Board to record the date of the petitioner as 20.08.1962 in place of 20.08.1958.

For the reasons discussed the order of the Senior Superintendent of Police, impugned at Annexure-9, in restoring the date of birth of the petitioner in the service book as 20.08.1958 together with the order bearing memo No. 363 dated 18.01.2016 impugned at Annexure-1, cannot be upheld and are, accordingly, quashed and set aside. Let appropriate correction as regarding the date of birth be carried out in the service book of the writ petitioner to read as 20.08.1962.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14-06-2017
Transmission Date	

