

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1649 of 2009

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Bechan Thakur, son of Late Pitambar Thakur, resident of village Sambhali P.S.
Khirhar, District Madhubani

.... Petitioner/s

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. Secretary , Bihar State Electricity Board Vidyut Bhawan, Bailey Road, Patna
4. Joint Secretary, Bihar State Electricity Board Vidyut Bhawan, Bailey Road, Patna
5. General Manager cum Chief Engineer, Koshi Electric Supply Area, Saharsa
6. Personal Officer, Koshi Electric Supply Area Saharsa
7. Electrical Superintending Engineer, Purnea Electrical Circle, Purnea
8. Electrical Executive Engineer Electric Supply Division, Purnea
9. Electrical Executive Engineer, Koshi Hydel Division, Birpur District Saharsa
10. Assistant Electrical Engineer, Electric Supply Sub division, Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Samir Kumar Sinha

For the Respondent/s : Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 12-04-2017

1. Heard Sri Samir Kumar Sinha, learned counsel for the petitioner and Sri Binod Kumar, learned counsel for the respondents /Bihar State Electricity Board (hereinafter referred to as the “Board”).

2. The petitioner, has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to quash part of the order contained in Memo No. 1033 dated 29.5.2008 whereby though petitioner was allowed to join was debarred from getting salary for the period during which he was kept out of job.



3. Short fact of the case is that the petitioner was earlier superannuated with effect from 31.10.2005 as Lineman from the Board in the year 2005 itself but he approached this court by filing a writ petition vide C.W.J.C. No. 3953 of 2005 raising dispute in respect of entry of date of birth recorded in his service book. A plea was taken that the petitioner's date of birth was 19.12.1948 as per the mark sheet and admit card, which fact was recorded in the service book, however, in the service book itself his average age as approximately 22 years was recorded. The writ petition was heard by a Bench of this Court. This Court noticed that confusion was created by the petitioner himself. However this court directed for examining the petitioner by medical board and it was indicated that as settled law, benefit of lower age fixed by the medical board should be extended to the petitioner. The said order was passed on 15.5.2007 vide Annexure '2' to the writ petition. Earlier in view of age recorded in the service book i.e. 22 years the petitioner was made to superannuate with effect from 31.10.2005. However in compliance with the order of the writ court dated 15.5.2007 in C.W.J.C. No. 3953 of 2005 the petitioner was got examined by the medical board and the medical board assessed his age on the date of examination in between 59 years and 61 years. Since the report of medical board was received and lower age of the petitioner was indicated as 59 years in



compliance with the order of the writ court the petitioner was allowed to join and finally he joined on 21.6.2008 vide Annexure '5' to the writ petition. Simultaneously, in compliance of the order of the writ court firstly an order contained in Memo No. 1033 dated 29.5.2008 was passed and it was decided to allow the petitioner to join. The decision which was taken for granting pension pursuant to his earlier retirement was also withdrawn. It was clarified that during the period in which petitioner remained out of service the petitioner on the principle of 'no work no pay' shall not be entitled to get salary. Thereafter, vide office order contained in Memo No. 238 dated 23.6.2008 Annexure '6' the petitioner was allowed to join in the Electricity Division, Purnea. The petitioner has approached this court against the impugned order to the extent whereby he was debarred from salary for the period during which he remained out of service. A plea has been taken by learned counsel for the petitioner that it was not fault on the part of the petitioner and petitioner by force was debarred from functioning and as such, he is entitled to get all the emoluments for the period during which he was out of service. To substantiate his submission he has relied on number of judgments particularly a judgment of this court reported in **2014(1) PLJR 548 (Amar Aaron vs The State of Bihar through District Magistrate, Patna & Ors.)**. He has placed paragraph no. 25 of the judgment



which is quoted hereinbelow:-

“25. The question for grant of back wages has undergone some paradigm shift. Yet the issue remains in the realm of discretion to be exercised on the facts of each case. No strict or rigid formula can be enunciated either for grant or refusal. Much will depend on the facts of each case for the manner in which discretion is to be exercised. In the present case, the employee has tenaciously pursued matters since 1997 having to fight a multi-pronged attack by the Bank and the State authorities. We have seen there was no iota of material before them to raise any suspicion with regard to his caste certificate. The opportunity given to the State by the Court has been exercised in reckless arbitrariness. This Court in CWJC 9607 of 1997 had already observed that in event of success the employee shall be entitled to full back wages. In (2009) 3 SCC 124 (Novartis India Ltd. Vs. State of W.B.) it was observed:-

“36.... The fact that they survived and did not die of starvation itself could not be a ground for denying back wages to them. Even an unemployed person has a right to survive. He may survive on his past savings....”

4. On aforesaid ground a plea has been taken for directing the respondents to give all benefits for the aforesaid period .

5. In this case a counter affidavit has been filed on behalf of the respondents and a plea has been taken that initially on declaration of the petitioner himself his approximate age as 22 years was recorded in his service book. Learned counsel for the Board has



referred to Annexure 'B' to the counter affidavit, which is a photo copy of the extract of the service book of the petitioner. He submits that for the first time in the service book in absence of any specific date of birth on the declaration of the petitioner his age was recorded approximately 22 years. However subsequently in the service book on the basis of some certificate produced by the petitioner in the year 1991 amendment was made and his date of birth was also recorded as 19.12.1948. Sri Binod Kumar, learned counsel, for the respondents submits that even though his supposed date of birth was recorded in the service book, the first age recorded in the service book was not deleted. Meaning thereby, that in the service book two age was mentioned in respect of the petitioner and as such treating his age as 22 years the petitioner was intimated regarding his date of superannuation i.e. 31.10.2005. However the petitioner had filed the writ petition and thereafter a Bench of this court directed for examining the petitioner by medical board and medical board assessed the age of the petitioner in between 59 and 61 years. The Board in compliance with the order of the writ court considered the lower age mentioned by the medical board i.e. 59 years and thereafter the petitioner was allowed to again join. It has been argued that the petitioner was kept out of service not due to intentional act or inaction on the part of the Board but petitioner himself had



contributed for such action. He submits that inaction or confusion created by the petitioner was itself noticed by this court while passing order in earlier writ petition i.e. C.W.J.C. No. 3953 of 2005 dated 15.5.2007.

6. Besides hearing learned counsel for the parties I have perused the materials available on record. Before examining further at the outset it would be appropriate to quote the order dated 15.5.2007 passed in CWJC No. 3953 of 2005 whereby the petitioner was directed to be examined by the medical board as follows:-

“Heard learned counsel for the parties.

From the pleadings of the parties there seems to be a bonafide dispute with regard to the age, if not the date of birth of the petitioner. Things have not been made clear by the petitioner also. He has submitted mark sheet an admit card showing his the of birth as 19.12.1948. This was a Prathma examination which he is supposed to have passed. **Based on this evidence if the authority had come to a particular conclusion then respondents cannot be blamed for the same as the petitioner has contributed to the confusion.**

In terms of the date of birth which has been fixed by the respondents, the petitioner has superannuated in the year 2005. If the claim of the petitioner is accepted he gets additional three years of service.

This court is of the opinion that this matter should be resolved through a scientific manner by referring the petitioner to a medical board. The petitioner shall be examined by the medical board and the opinion of the medical board shall decide the issue about the age and date of superannuation of petitioner. Needless to say that in terms of



the various decisions rendered by this court as well the Hon'ble Supreme Court it will be the lower age fixed by the medical board which has to be taken for the purpose of superannuation from service under the Board.

This writ application is disposed of with the above direction.”

7. On perusal of the aforesaid order it is evident that this court in earlier order had observed that confusion was created by the petitioner for which respondents can not be blamed. Meaning thereby that situation which was created to earlier superannuate the petitioner was not the fault of the respondent/ Board but the petitioner had equally contributed for the same. So far claim of salary for the period during which petitioner was ousted, the court is of the opinion that the respondents had rightly decided not to pay salary for the said period on the principle of 'no work no pay'. Had it been a case that respondents maliciously forced the petitioner to superannuate prior to his date of retirement then, in that event, petitioner would have got a case for claiming salary. However in the present case in view of the facts and circumstances particularly the observation of this court in the earlier writ petition it is evident that there was no intentional action of the respondents to arbitrarily oust the petitioner from service. So far Amar Aaron case (supra) is concerned, on perusal of the aforesaid paragraph which has been referred to hereinabove it is evident that claim of wages in such cases is required to be examined



on facts and circumstances of each case. In the present case since confusion was created by the petitioner by producing certificate belatedly and thereafter twice date of birth was recorded in the service book, certainly the respondents can not be held to be responsible for such superannuation of the petitioner which had occurred in the month of October 2005.

8. In view of the facts and circumstance, I do not find any ground to pass any favourable order.

9. The writ petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
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