

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1585 of 2013
IN
Civil Writ Jurisdiction Case No. 10149 of 2007**

- =====
1. The Bihar State Electricity Board @ Bihar State Power (Holding) Company Limited Through Its Chairman Cum-Managing-Director, Bailey Road, Patna
 2. The Chairman Cum Managing Director, Bihar State Electricity Board @ Bihar State Power (Holding) Company Limited Board, Bailey Road, Patna
 3. The Secretary, Bihar State Electricity Board, Baily Road, Patna
 4. The Superintending Engineer, Hajipur, Hajipur Electric Supply Sub-Division @ Circle Hajipur, District- Vaishali
 5. The Executive Engineer, Electric Supply Sub-Division @ Division Hajipur, District- Vaishali

.... Appellants

Versus

Ram Chandra Mahto Son Of Mottor Mahto Resident Of Village- Mahenya Malpur, Post Office- Malpur, Police Station- Patepur, District- Vaishali At Present Quarter No. D/6, Konhara Ghat, Power House Colony Hajipur, District- Vaishali

.... Respondent

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Appearance :

For the Appellants : Mr. Vinay Kirti Singh, Senior Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-03-2017

Delay of 34 days for the reasons indicated in I.A. No.

8706 of 2013 is condoned. Interlocutory Application is allowed.

Time has come when curtains must be drawn on the dispute as to what should have been the date of birth of the Ram Chandra Mahto and, therefore, his date of superannuation.

The decision taken by the appellants to superannuate the private respondent from service on a date fixed by them as 1948,



which was a decision communicated in terms of Annexure-7 dated 03.07.2007 came to be challenged in the writ application, namely, 10149 of 2007. After a detailed hearing and consideration, the learned single Judge by order dated 21.08.2013 came to a conclusion as under :

“On perusal of aforesaid provisions it is evident that once date of birth / age is recorded in the service book then within specified period only it can be corrected. In the present case in the supplementary counter affidavit also the respondent / Board has brought on record copy of service book, which categorically shows the date of entry in the employment of the petitioner as 15/8/1972, and as such, plea taken by the Board that he was appointed in the year 1968 appears to be not correct. Moreover, this stand has specifically been denied by the petitioner in its reply to the counter affidavit. In paragraph no. 6 of reply to the counter affidavit it has been categorically stated that petitioner was appointed in the service of Electricity Board on 15/8/1972 and posted at Electric Supply Sub Division Dighwara office of Electrical Superintending Engineer , Muzaffarpur, vide order no. 586 dated 14/8/1972 and his name finds place at serial no. 134. The petitioner has also brought on record the order no. 586 dated 14/8/1972, whereby, petitioner and others were



appointed. In view of facts and circumstances particularly the fact that in the service book date of birth was recorded as 11/3/1951, the petitioner would have retired after completion of 60 years from the date of his birth i.e. 11/3/1951. The impugned order is not sustainable in the eye of law due to the simple reason that date of birth recorded in the service book was corroborated by the report of the medical board which was conducted as per instance of the Board itself in the year 1993. Accordingly, order impugned i.e. Annexure – 7 is hereby set aside. In view of the fact that court has considered the date of birth of the petitioner as 11/3/1951 as recorded in the service book of the petitioner, it will be deemed that petitioner has retired after completion of 60 years from 1951, and as such, petitioner shall be entitled to get all the consequential benefits. Since the petitioner was unauthorisedly and illegally restrained from functioning or discharging his duty, he shall be entitled to claim all the benefits including salary, even though he has not worked. The writ petition stands allowed with a direction to the respondents to calculate all the dues and pay to the petitioner within a period of three months from the date of receipt / production of a copy of this order.”



The learned single Judge has committed no error by pinning the appellants down to the date of birth recorded in the service book. The other controversies were the controversies which were not required to be created in the very first place.

No interference, therefore, is warranted with the impugned order. Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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