

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.133 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 9870 of 2013**

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Smt. Anita Kumari, Wife of late Rajesh Kr. Singh, Resident of Village Nausahara
P.S. Ghosi District Jehanabad

.... Appellant/s

Versus

1. The Bihar State Power (Holding) Company Ltd. through its Chairman/Managing Director, Vidyut Bhavan Bailey Road, Patna.
2. South Bihar Power Distribution Company Ltd. through its Chairman, Vidyut Bhavan Bailey Road, Patna.
3. Principal Secretary Energy Department, Govt. of Bihar, Patna.
4. Member Administration South Bihar Power Distribution Company Ltd. Vidyut Bhawan Bailey Road, Patna
5. General Manager/Chief Engineer South Bihar Power Distribution Co. Ltd., PESU Area, Patna
6. Commercial Officer, Bihar Power Distribution Company. Ltd. PESU Area Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bajarangi Lal, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate

Mr. Vijay Kumar Verma, Advocate

Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-05-2017



Seeking exception to an order dated 13.11.2015 passed by the learned Writ Court in C.W.J.C. No. 9870 of 2013 this appeal has been filed under Clause 10 of the Letters Patent.

2. Appellant filed the writ petition seeking quashment of letters dated 03.05.2012 and 21.11.2012 (Annexures- 5 and 7 in the writ petition) whereby she was directed to sign a Service Book based on the date of birth entered in the Service Book.

3. Facts in brief go to show that appellant's husband was working in the Bihar State Electricity Board. He died in harness on 23.05.1999 and the appellant sought appointment on compassionate basis. While seeking appointment she produced School Leaving Certificate of Class-X as a proof of her date of birth and in this her date of birth was mentioned as 25.12.1971. This was further supported by an affidavit sworn by the applicant. However, at the time of her appointment, the employer also subjected her to Medical Test. The Medical Board submitted its report on 10.06.2000 and assessed her age to be between 26 and 28 and gave an opinion that her date of age be assessed as 27 years as on 10.06.2000. The appellant was appointed in the Board. The Secretary of the Board found that in the matter of recording entry of date of birth in the Service Book of the appellant an error has been committed inasmuch as her date of birth has been recorded based on the Medical Report



and not on the School Leaving Certificate. It seems that the appellant protested and when her protest was rejected, she filed the writ petition and claimed that her date of birth should be recorded as per the opinion given by the Medical Board and not as per the date of birth recorded in the Service Book. The respondents resisted the claim and brought to the notice of the Writ Court the provisions of the Bihar State Electricity Board, Patna Standing Order formulated under the Industrial Employment (Standing Orders) Act, 1946, Clause Standing Order 4(d) and (c) thereof and argued that the date of birth has to be recorded as per the School Leaving Certificate and not as per the Medical Report.

4. The learned Writ Court examined the matter in detail and in Paragraph 11 recorded the following finding:-

“11. As per the Standing Order, the School Leaving Certificate would form one of the satisfactory proofs of age of a workman. In case of doubt, it is open to the Board, to have such workman examined by a Medical Doctor, whose report would be binding on the workman. The petitioner has placed reliance on this part of the Standing Order that the age determined by the Medical Board ought to have accepted as correct date of birth. In my view, in order to fully satisfy itself, the Board can ask the applicant to undergo medical examination for determination of age. As per Standing Order under Act, 1946, the



Medical Report would be binding on the workman. The Board normally too is expected to accept the same. Nonetheless, it is not open for a workman to raise any grievance, if the Board ultimately accepts his/her own affidavit and School Leaving Certificate, so produced in support of his/her age. It is also not open for the applicant to ask the appointing authority not to rely upon the documents produced by her in support of her age. Though, the Board would have option either to accept the date of birth mentioned in the self sworn affidavit and the School Leaving Certificate produced by the petitioner or the report of the Medical Board, the latter (petitioner) cannot validly object to either of the two, if the appointing authority chooses to rely upon own documents produced by her, as such, the impugned order by which the respondents proposed to open a new Service Book, with a revised date of birth, based upon the own affidavit and School Leaving Certificate of the petitioner, cannot be said to be suffering from any infirmity.”

5. The learned Writ Court found that the action of the Board need not be interfered with. The only ground canvassed before us was that once the Medical Board’s report is available that should form the basis for recording of the date of birth and as the Standing Order also recognizes recording of date of birth based on the report of the Medical Board, the learned Writ Court has committed an error.



Clause (d) of the Standing Order reads as under:-

“(d) The age of every workman other than casual shall be recorded at the time of his employment. The Matriculation or School Leaving Certificate or Horoscope shall be deemed to be the satisfactory proof of the age of the workman. A workman who is unable to produce documentary evidence of his age or the same having been produced is not admitted by the appointing authority for valid reasons he shall state his age and make a written declaration that the age as stated by him is correct. Such statement shall always be supported by an affidavit. Such workman may be sent by the appointing authority to the Govt. Medical Officer for examination and his opinion as to the workmen’s age shall be binding on the workman. In case of dispute in the matter of age or date of birth as recorded in service book at the time of appointment, during the period of service due to overwriting, cutting on it or without sufficient supporting documents as mentioned in clause

(c) above of standing order which should have been in the file, the matter will be referred to Medical Board by the appointing authority on the request of the workman for determination of age and the decision of the Medical Board would be final and binding on the Management as well as on workman. This will be applicable only for those employees who do not possess educational qualification i.e.



Matric and above.” (Emphasis supplied)

6. If we go through the aforesaid provision, we find that the date of birth or age of an employee has to be recorded at the time of his employment. The Matriculation or School Leaving Certificate or Horoscope is deemed to be under the Standing Order the satisfactory proof of age of the workman. It is only when the workman is unable to produce the documentary evidence of his age that weightage is given to the Medical Examination conducted and the Medical Board’s opinion. In the case of **Agra Electric Supply Co. Ltd. Vs. Sri Alladin & Ors.- AIR 1970 SC 512** the Hon’ble Supreme Court has held that Standing Orders formulated under the Industrial Employment Standing Orders once they come into force are binding on all the employees working in the establishment. That being the position and as the Standing Order in question clearly contemplates that if a Matriculation Certificate, a School Leaving Certificate or a Horoscope is available, the date of birth has to be entered based on the said certificate. We see no error in the order passed by the Writ Court warranting reconsideration. The Writ Court has decided the issue correctly in accordance to the requirement of the Standing Order which is nothing but a statutory regulation having the force of law and, therefore, the appellant’s prayer for recording the date of birth as per the Medical Board’s recommendation cannot



be accepted. Finding no case for indulgence, the Letters Patent Appeal stands dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

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