IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil writ jurisdiction case no.9144 of 2014

==

1. Agam Lal Paswan Chaukidar no. 13/3, son of late Shyam Sunder Paswan, r/o village Dhaneshri, P.O. Mangaphar charia, P.S. Bharganwan, district - Araria

.... Petitioner

Versus

1. The state of Bihar through its Principal Secretary, Department of Home (Police), Government of Bihar, Patna
2. The District Magistrate-cum-Collector (Araria) district - Araria
3. The Deputy Collector, In-Charge, District General Section, Araria
4. The Superintendent of Police, Araria, district - Araria
5. The Sub Divisional Police Officer of Farbisganj Sub Division, district - Araria
6. The Sub Divisional Officer of Farbisganj Sub Division, district - Araria.
7. The Circle Officer, Bhargawan Circle, district - Araria
8. Officer In-charge, Bhargawan, P.S. District - Araria
9. Block Development Officer, Bhargawan, Araria .... Respondents

==

Appearance :
For the petitioner : Mr. Md. Helal ahmad, adv.
For the respondents : AC to GA VIII

==

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 15-09-2017

Heard Mr. Md. Helal Ahmad, the learned counsel for the petitioner, and the learned Assistant Counsel to Government Advocate, VIII.

2. The petitioner, herein, prayed to quash the order, dated 25.02.2014, as contained in memo no. 228, issued by the deputy collector, in-charge, general section, Araria, whereby the order, dated 17.09.2013, as contained in memo no. 945, of the district magistrate, Araria, regarding fixation of date of birth of the petitioner has been cancelled without affording opportunity to the petitioner.

3. The brief facts is that the petitioner was appointed as Chowkidar on 10.08.1982 vide order, as contained in memo no. 4577. The government granted status of fourth grade employee to Chowkidar and consequent thereupon the service book of the petitioner is opened in the year 1990 and the date of birth of the petitioner was mentioned as 21.12.1949. The petitioner filed a petition in the year 2006 that on 04.05.1962 the petitioner got admitted in Primary School, Dhaneshwari, P.S. Bhargawan, District Araria, and in the school register, his date of birth is mentioned as 19.01.1956. The petitioner left the school on

WEB COPY

31.12.1964, after Class III. The Block Development Officer, Bhargawan, recommended the petition of the petitioner to the District Magistrate, Araria. The Gram Panchayat Supervisor, Bhargawan, held an enquiry with regard to date of birth of the petitioner, but, during the pendency of the petition before the District Magistrate, for making correction in the date of birth of the petitioner in the service book, the petitioner retired from service on 31.12.2009. The District Magistrate ordered that on the basis of medical certificate the age of the petitioner is 56 years and 6 months and the date of retirement of the petitioner would be 28.02.2016. The petitioner joined the service, but, again, the Deputy Collector, In-Charge, General Section, Araria, issued letter, as contained in Memo No. 228, dated 25.02.2014, that the Collector, Araria, cancelled the order, dated 17.09.2013, as contained in Memo No. 945, by which the date of birth of the petitioner was corrected in the service book. Against that order the petitioner filed this writ petition.

4. The respondents filed counter affidavit and stated that the petitioner was appointed on 10.08.1982 and his date of birth was mentioned as 31.12.1949 in the year 1990. The service book was opened and the petitioner put his signature/thumb impression on the service book. After twenty-four years from the date of appointment, the petitioner filed petition for correction of his date of birth in the service book on the basis of the school leaving certificate. When the certificate was sent for verification, the Headmaster of the school suspected the genuineness of the certificate of the petitioner as there was no record, before 1978, available in the school. The petitioner retired on 31.12.2009. The petitioner also filed a petition on 27.04.2010, on affidavit, that after his retirement his son be appointed as Chowkidar because he has already retired on 31.12.2009.

5. Mr. Md. Helal Ahmad, the learned counsel for the petitioner submits that the petitioner filed a petition for correction in his date of birth in the year 2006. Rule 96 of the Bihar Finance Rules provides mentioning of date of birth of a person at the time of

WEB COPY

appointment. Note 1 of the aforesaid Rule also provides that no representation for rectification of mistake in the date of birth as entered in the records of service of a Government servant shall be entertained, if it is not submitted within a period of ten years from the date of his entry into government service. It is submitted that if there is a bonafide mistake of entering the date of birth of a person this Court has, on many occasions, held that such application is not barred by limitation.

6. The learned counsel for the petitioner placed reliance on a Division Bench judgments of this Court reported in **2014(3) P.L.J.R., 746 (Tajuddin Khan Vrs. The State of Bihar & Ors.)** and **2015(1) P.L.J.R., 630 (Ram Akhilesh Singh Vrs. The State of Bihar & Ors.)**.

7. Mr. Helal Ahmad, the learned counsel for the petitioner, further, submits that the Collector passed the order of correction in the date of birth of the petitioner on 17.09.2013, as contained in Memo No. 945, but, before cancelling this order, vide order, dated 12.02.2014, by the Collector, himself, the petitioner was not noticed and, therefore, the order is bad on account of violation of natural justice.

8. On the basis of submission of the parties the questions falls for consideration whether the petition of the petitioner filed in the year 2006 merits corrections in his date of birth entered into the service book at the time of opening the service book in the year 1990.

9. According to Rule 96 of the Bihar Finance Rules every person newly appointed to a service or post under government should at the time of the appointment declare the date of his birth by the christian era which as far as possible be with confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under rule 97 should be recorded in the history of service, service book, or any other record that may be kept in respect of the government servant’s service under government and once recorded, it cannot be altered, except in the case of a clerical error without the orders of the state government. Notes 1 and 2 of the aforesaid rules further provides that no

WEB COPY

representation for rectification of mistake in the date of birth as entered in the records of service of a government servant shall be entertained, if it is not submitted within a period of ten years of the date of his entry into government service. Representation submitted thereafter will be summarily rejected by the authority competent to pass final orders under this rule unless there are very exceptional cases to relax this time-limit. The heads of departments are authorized to exercise this power in the case of non-gazetted government servants under their control.

10. From the facts of the present case, it is evident that admittedly the petitioner was appointed on the post of Chowkidar on 10.08.1982. Government of Bihar granted status of Class IV employee to all the Chowkidars working in the State of Bihar. Consequently the service book of the petitioner was opened in the year 1990 and his date of birth was mentioned in the service book allegedly on the basis of the disclosure made by the petitioner as 31.12.1949. The petitioner did not represent any time immediately or thereafter for about 15 years for correction in the date of birth entered in the service book. The petitioner filed representation only in the year 2006 for correction in the date of his birth in the service book on the basis of a school leaving certified issued by the Middle School, Bhargawan, and the concerned authority recommended the petition of the petitioner to the Collector for necessary orders. The Collector ordered for determination of age by the medical board, but, in the meantime, the petitioner retired on 31.12.2009. The Collector passed the order on 17.09.2013, as contained in Memo No. 945, Annexure 1A, that on consideration of the petition of the petitioner, the age of the petitioner is assessed to between 55 to 60 years and, therefore, his age is determined to be 57 years 6 months and it is stated that the petitioner shall retire on 28th February, 2016.

11. According to the petitioner, the petitioner joined, but, the learned counsel for the State pointed out the joining letter does not bear the signature of any authority nor the petitioner was paid any salary. Since, the petitioner had already retired on 31.12.2009, the letter issued

WEB COPY

by the Collector did not take effect and consequentially the same letter was withdrawn by the Collector himself on 12.02.2014 and the Deputy Collector, In-Charge, General Section, Araria, issued the letter in pursuance thereof on 25.02.2014, Annexure 1.

12. It has been pointed out by the learned counsel for the State that according to Rules 96 and 97 of the Bihar Finance Rules, the competent authority, to make correction in the date of birth, is Government and in case of non-gazetted employees, the Head of the Department is the competent authority. The Collector of a district is not the Head of the Department, but, the Commissioner of the Division is designated as the Head of the Department and the order of the Collector is without jurisdiction and, therefore, the order does not give any right to the petitioner. The Collector himself withdrew the same order which was without jurisdiction. Since, the order did not take effect and no communication was made and the petitioner did not join, I find that the petitioner is not at all required to be noticed before cancellation of such order, which was without jurisdiction. There is no violation of principle of natural justice. More over, the petitioner could not be able to show any prejudice to him by not issuing any notice before cancellation.

13. From perusal of Rule 96 of the Bihar Finance Rules, it appears that date of birth of a Government servant shall be entered into service book on the basis of matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under rule 97 should be recorded in the history of service, service book, or any other record that may be kept in respect of the government servant.

14. In the case of **2014(3) P.L.J.R., 746 (Tajuddin Khan)** (supra), it is held that the date of birth of Tajuddin Khan was mentioned in the service book as 01.01.1951 on the basis of matriculation certificate, but, it transpired that in the matriculation certificate date of birth of Tajjuddin Khan was mentioned as 01.01.1953 and due to

WEB COPY

clerical error in place of 01.01.1953, 01.01.1951 was written, but, his petition for correction in the date of birth was rejected on the ground that it was filed after ten years and, thereafter, the same is not entertained. On such facts, this Court finds that Rule 96 of the Bihar Finance Rules, itself, provides remedy that if there is any clerical error that can be rectified. Almost similar was the facts in the case of **2015(1) P.L.J.R., 630 (Ram Akhilesh Singh)** (supra), but, in the present case the petitioner filed petition for correction of his date of birth on the ground of his school leaving certificate issued by the Primary School, Dhaneshwari, P.S. Bhargawan, District Araria. When the certificate was sent for verification, the Headmaster doubted the genuineness of the certificate as no records before 1978 were available in the school. The Collector ordered for correction of date of birth of the petitioner on the basis of the report of medical board although the Collector is not empowered to correct date of birth of an employee under Rules 96 and 97 of the Bihar Finance Rules on the basis of age by medical board and later on the same order having no sanctity was withdrawn within few months. The Collector came to know about the illegality and cancelled that order. Before correction in the date of birth, the petitioner had already retired about three and half years ago.

15. The Collector, although not authorized under Rules 96 and 97 of the Bihar Finance Rules, ordered for correction of date of birth of the petitioner in the service book, not on basis of clerical error crept in the service book on the basis of any school leaving certificate, but, on the basis of assessment of age of the petitioner by the medical board which assessed the age of the petitioner between 55 to 60 years. The Collector took mean point and assessed the age of the petitioner to be 57 years and 6 months. Rules 96 and 97 of the Bihar Finance Rules do not permit correction of date of birth on the assessment of age by the medical board. The petitioner produced school leaving certificate of Primary School, Bhargawan, district Araria, but, when the same was sent to the School, the Headmaster reported that the record before 1978 of the School is not available and the certificate does not appear to be

WEB COPY

genuine. Therefore, there appears no material before the Collector, except the report of the medical board on the basis of ossification test which can not give correct and exact age of a person to come to a finding that there is any clerical error in the service book of the petitioner with regard to entry in the date of birth of the petitioner and on the facts the judgments on which the petitioner placed his reliance do not support the case of the petitioner.

16. Having considered the facts, aforesaid, I find no merit in this writ petition, accordingly, the same is **dismissed**.

(prabhat kumar jha, j)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.09.2017
Transmission Date	

WEB COPY