

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11140 of 2001

=====

Ajeet Kumar, son of late Budh Ram Gope, resident of Mohalla Chiraiyantar
Gaya, P.S. Rampur, Dist. Gaya.

... .. Petitioner/s

Versus

1. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
2. The General Manager-cum-Chief Engineer, Central Bihar Area, Bihar State Electricity Board, Patna.
3. The Electrical Executive Engineer, Bihar State Electricity Board, Supply Division, Gaya West, Gaya.
4. The Assistant Electrical Engineer, Electric Supply Sub-Division, Bodh Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	None
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Adv. Mr. Akhileshwar Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 13-03-2018

No one appears for the petitioner. Counsel for the Bihar State Electricity Board now South Bihar Power Distribution Company is present.

In this case, the petitioner is claiming for correction of the date of birth of his father recorded in the Pension Payment Order and Gratuity Payment Order dated 31.8.1938 as mentioned in the Service Book and made a prayer for commanding them to treat the father of the petitioner has superannuated from service on 18.9.1997.

The father of the petitioner, namely, Budh Ram Gope was an employee of the Bihar State Electricity Board on the post of Head



Lineman, he superannuated from service on 18.9.1997 vide office order no. 241 dated 18.9.1997. The date of birth was recorded in the Service Book as 31.8.1938 and has died on 10.06.1998 and further says that he has made a representation for payment of G.P.F., his date of retirement has been changed with effect from 31.8.1988 treating the date of birth as 31.8.1928 without correcting the date of birth mentioned in the Service Book and, thereby, deducted the entire amount of money paid to the father of the petitioner for the period from 31.8.1988 to 18.9.1997 from the G.P.F. amount. The authority has prepared his pension and paid gratuity amount treating the date of birth as 31.8.1928. He has submitted that it is completely a wrong exercise of power as the respondents after retirement cannot change the date of birth and, as a consequence, the father of the petitioner made to retire on 31.8.1988 whereas, as per entry, he was to retire on 18.9.1997.

In the counter affidavit, it has been mentioned that at the Board's level, vide letter no. 758 dated 16.6.1998, it was decided that the date of birth of the petitioner will be treated to be 31.8.1928 as in the Civil List prepared in the year 1981, his date of birth has been recorded as 31.8.1928. In that view of the matter, the age of superannuation will come to 31.8.1988 and wrongly he has continued in the Board from 1.9.1988 to 18.9.1997 and, as



such, the extra payment made to the petitioner having been recovered.

The date of superannuation is decided on the basis of date of birth recorded in the Service Book including all details. The employer cannot unilaterally change the date of birth recorded in the Service Book but always subject to grant of hearing to the concerned employee. In a case of cutting and overwriting in the Service Book, the employer following the proper procedure may make necessary correction. The Service Book itself indicates that the date of birth of the father of the petitioner was recorded as 31.8.1938 both in word and in figure and, after the retirement, the entire exercise has been done by the Board but, there is nothing on record to show that any prior notice was given to the employee before taking this exercise of changing the date of birth. Inasmuch as it is a fact that he had worked up to 1997, it was improper for the employer to recover the amount from the employee for the work he has done, it is not the stand of the employer (Board) that he continued in service by playing fraud or misrepresentation but, it is the employer (Board) which, on the basis of service book, allowed the father of the petitioner to continue up to 1997.

As per counter affidavit, the basis of claim of change of date of birth of the father of the petitioner is the entry made in the Civil



List, cannot be said that the entry made in the Civil List would prevail over the entry made in the Service Book of the father of the petitioner.

In that view of the matter, the action of the Board to recover the amount from the petitioner is set aside. The respondents are directed to return the recovered amount from the GPF of the petitioner and, that too, after his retirement and death and changing the date of birth after superannuation cannot be upheld by this Court on the basis of Civil List and without following the proper procedure. Accordingly, the Board is directed to treat the date of birth of the father of the petitioner as recorded in the Service Book which is 31.8.1938 and, on that basis, the father of the petitioner will be entitled to gratuity and all the retirement dues.

All the exercise must be done within a period of three months from the date of receipt/production of a copy of this order.

In the result, the present writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2018
Transmission Date	NA

