

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19378 of 2017

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Ravindra Nath Kundu, Son of Late Nimaichand Kundu, Resident of Mohalla Ruidhasha Ward no. 24, Kishanganj, P.O. + P.S. + District-Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Education Department, Government of Bihar, Patna.
2. B.N. Mandal University, Madhepura, through its Registrar.
3. The Vice Chancellor, B.N. Mandal, University, Madhepura.
4. The Registrar B.N. Mandal University, Madhepura.
5. The Principal, Marwari College Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 09-04-2018

Heard learned counsel for the petitioner; State and B.N.

Mandal University (hereinafter referred to as the ‘University’).

2. The petitioner has moved the Court for the following reliefs:

“I. To quash and set aside the letter dated 12.09.2017 issued by the Principal Marwari College, Kishanganj (Respondent no. 5) addressed to the vice chancellor B. N. Mandal university informing that the petitioner is going to retire on 30.09.17 on completion of 44 years of service from the date of appointment on 21.09.1973.

II. To direct the university authority/college to retire the petitioner from the post of clerk on attaining the age of 62 years because 44 years have been counted from a date when the petitioner was less than 16 years of age.

III. To direct the university/college authority to reckon the service of the petitioner with effect from the date he attained majority on completion of



18 years of age i.e. 03.01.1976.

IV. Any other writ order or direction to which the petitioner is found fit and entitled in the facts and circumstances of the case.”

3. The petitioner was appointed as a Peon in Marwari College, Kishanganj on 21.09.1973. At the said time, it was run by a private governing body. Thereafter, it was made a constituent college under the L.N. Mithila University, which upon bifurcation of its territorial jurisdiction, now comes under B.N. Mandal University. By the impugned order dated 12.09.2017, he was informed that he would superannuate on 30.09.2017, on account of him having completed 44 years of service from the date of his appointment. The petitioner has challenged the same on the basis of *Madhyama* certificate which is equivalent to Matriculation certificate showing his date of birth as 03.01.1958 and has further sought a direction that he should be permitted to complete 62 years from his recorded date of birth. The authorities have issued the order on the basis, that since 18 years is the minimum age on which a person can get into any service under the State or its instrumentalities, counting the minimum age 18, a person can be in service for a maximum period of 44 years, since as of now 62 years is the age of superannuation fixed for all such employees of the Universities.

4. Learned counsel for the petitioner submitted that at the



time he was appointed on the post of Peon, the college being run by a private governing body, there was no prohibition with regard to the age of engagement and, thus, when the recorded official date of birth of the petitioner is 03.01.1958, the petitioner has to be given the benefit of attaining the age of 62 years till his superannuation.

5. Learned counsel for the University has filed a counter affidavit and taken a stand that if the age of the petitioner is taken to be below 18 years then the entry into his service becomes illegal and as illegality cannot be perpetuated, the service has to be declared void *ab initio* and accordingly, he would forfeit the benefit of his entire service and the authorities have been indulgent with him to at least give him the benefit of the entire and maximum period of 44 years for which any similarly situated employee could have worked. It was submitted that the petitioner cannot take double benefit; i.e., one at the time of his entry into service when clearly he was underage, as per the said certificate, and thereafter another benefit of working beyond 44 years, which is maximum period any person can legally work, as it has to be taken in reference to the minimum age prescribed for such employment under the State or its instrumentalities.

6. Having considered the rival contentions, the Court does not find merit in the present writ application. Though, it may be an admitted position that the date of birth recorded in *Madhyama*



certificate issued to the petitioner is 03.01.1958, which under normal circumstances, is a document for the purposes of reckoning the date of birth of a person, but in the peculiar facts and circumstances of the present case, the same would not be of much help to the petitioner. The reason for the same is primarily that the document has to be in close proximity to the dispute or the date on which any benefit is claimed by the petitioner. The *Madhyama* examination is equivalent to Matriculation examination and normally age for appearing at such examination is 15-16 years. In the present case, the petitioner entered service in 1973 and thereafter 20 years later he had obtained such certificate on 10.07.1993 i.e., at the age of more than 35 ½ years and the Intermediate examination in the year 1995. However, when the Court itself has serious doubt with regard to the *bona fide* and manner in which, at the age of 35 ½ years, the petitioner has appeared and obtained *Madhyama* qualification and more importantly, after 20 years of service, the said entry of date of birth at the relevant time being only as per the self declaration of either the candidate or his guardian, in the background of what has been discussed hereinabove, clearly cannot be an unimpeachable document. Thus, when there is so much of *prima facie* and apparent loopholes in the correctness of the date of birth, the authorities, in the considered opinion of the Court, have rightly taken the alternative view, which is reasonable, safe and



the obvious presumption that a person could have entered service only at the age of 18 and then could have put in only 44 years of service till the time he superannuates, which they have taken, the Court finds no reason to take another view. Moreover, even otherwise, upon completion of full and maximum permissible period of employment, i.e. 44 years, the petitioner has been made only to superannuate without any kind of punitive action being taken against him, which obviously has resulted in grant of full post retiral and pensionary benefits to him, the Court finds no ground to interfere and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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