

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11412 of 2017

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1. Kapil Deo Roy, Son of Late Dular Roy, Resident of village - Keshopura, PS - Janakpur Road, District - Sitamarhi.
 2. Islok, Son of Late Laxman Ram, Resident of Village - Golakpur, PS - Ghoshi, District - Jehanabad.
 3. Narayan Prasad, Son of Sri Yamuna Prasad, Resident of village and PO Nadaul, PS - Masaurhi, District - Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. The Registrar General, Patna High Court, Patna.
3. The Principal Secretary cum Law Remembrance, Law Department, Govt. of Bihar, Patna.
4. The Registrar (Administration), Patna High Court, Patna.
5. The Registrar (Establishment), Patna High Court, Patna.
6. The Joint Registrar (Judicial), Patna High Court, Patna.
7. The Accountant General, Bihar, R-Block, Patna.

.... Respondents

with

Civil Writ Jurisdiction Case No. 7755 of 2017

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Nand Kishore Prasad, Son of Late Raghunandan Prasad, Resident of Village- Sumer Bala Bigha, P.O.- Malathi, P.S.- Makhadumpur, District- Jehanabad.

.... Petitioner

Versus

1. The State of Bihar.
2. The Registrar General, Patna High Court, Patna.
3. The Principal Secretary cum Law Remembrancer, Law Department, Govt. of Bihar, Patna.
4. The Registrar (Administration), Patna High Court, Patna.
5. The Registrar (Establishment), Patna High Court, Patna.
6. The Joint Registrar, (Judicial), Patna High Court, Patna.
7. The Accountant General, Bihar, R- Block, Patna.

.... Respondents

Appearance :

(In CWJC No.11412 of 2017)

For the Petitioner/s : Mr. D.K.Sinha, Sr.Adv.
Mr. Bajarangi Lal, Adv.
Mr. Ashish Kumar Ghosh, Adv.

For the State : Mr. Prashant Pratap, GP2

For the High Court : Mr. Piyush Lall, Adv.

For the A.G. : Mr. Manish Kumar, Adv.

(In CWJC No.7755 of 2017)

For the Petitioner/s : Mr. D.K.Sinha, Adv.
Mr. Bajarangi Lal, Adv.

For the State : Mr. Kaushal Kr. Jha, AAG8

For the High Court : Mr. Piyush Lall, Adv.



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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 29-01-2018

The three petitioners in C.W.J.C.No. 11412/2017 and the sole petitioner in C.W.J.C.No. 7755/2017 (hereinafter referred to as 'the second writ petition') are aggrieved by the order bearing Memo No. 24210-20 dated 7.4.2017 issued under the signature of the Registrar (Establishment), whereby they have been asked to retire on completion of 44 years of service after treating them aged 16 years on the date they joined the service of the High Court, albeit on daily wages. A copy of the order is impugned at Annexure 8 to C.W.J.C.No. 11412/2017 and Annexure 9 to the second writ petition.

The order of the Registrar (Establishment) encloses a list of the employees together with their respective dates of superannuation and the name of the petitioners in the two writ petitions are appearing at serial nos. 9, 10, 12 and 1 respectively in the chart.

The petitioner in the second writ petition has also questioned the order bearing Memo No. 22145 dated 31.3.2017 of the Registrar General, impugned at Annexure 8 to the second writ petition, whereby he was made to superannuate on completion of 44 years of service w.e.f. 31.3.2017, since his joining on 1.4.1973.

Since the issue raised in the two writ petitions as well as the order(s) put to challenge is the same except for the superannuating



order dated 31.3.2017 of the petitioner in the second writ petition, hence I would be referring to the pleadings as occurring in C.W.J.C.No. 11412/2017 for the sake of convenience unless clarified with specific reference to the other writ petition.

Mr. Devendra Kumar Sinha, learned Senior Counsel, has appeared for the petitioners in the two writ petitions alongwith Mr. Bajrangi Lal, Advocate on record. The State is represented by the respective State Counsel and the High Court is represented through Mr. Piyush Lall, Advocate.

The facts are not in dispute and all these petitioners are employees of the High Court having joined their respective service as daily wager on different dates in 1974 in so far as the petitioners in the first writ petition is concerned and 1.4.1973 in so far as the sole petitioner in the second writ petition is concerned. It is again not in dispute that all these petitioners were underage at the time of their engagement as daily wager and were regularized in service in July, 1977 as Mazdoor. The third relevant date for the purpose would be 20.4.1989 when all these petitioners were appointed against a Class IV post of Peon in the then pay scale of Rs.350-425 and were confirmed vide order dated 15.10.1992. Copies of the appointment order and the confirmation order are enclosed as Annexures 1 and 2 to the writ petition and the name of these petitioners appears at serial



nos. 23, 28 and 24 in so far as the petitioners in the first writ petition is concerned and serial no. 17 in so far as the petitioner in the second writ petition is concerned. Since none of the petitioners had any proof of date of birth at the time of their initial engagement, hence when the process for their regular appointment was initiated they were asked to submit medical certificate of fitness granted by a Government hospital and accordingly, the petitioners submitted the certificate granted by the In-charge Medical Officer, Patna High Court Hospital, certifying their fitness and assessing their age as well and on which basis the date of birth is stated to have been recorded in the service book of the three petitioners in the first writ petition as 3.5.1967, 27.4.1965 and 5.1.1968 respectively. The certificate of fitness issued by the In-charge Medical Officer of the High Court dated 3.5.1989, 27.4.1989 and 1.5.1989 in respect of the three petitioners has been placed on record vide Annexures 'A series' to the counter affidavit filed on behalf of respondent no.2. In a similar manner the age of fourth petitioner in the other writ petition dated 3.5.1989 was estimated as 24 years and thus, his service book recorded his date of birth as 3.5.1965. A copy of the certificate of fitness so issued is at Annexure 'A' to the counter affidavit filed on behalf of respondent no.2 in the second writ petition.

The issue of engagement of the daily wagers in the services



of the High Court first attracted the attention of the Hon'ble Chief Justice on 24.7.1998 when an advisory was issued of not engaging anyone who was less than 18 years at the time of his engagement vide Annexure 3. The Hon'ble Chief Justice taking note of the circumstances prevailing at the relevant time where engagements were made on daily wages without verification of age or educational qualification as well taking note of the Labour Laws which prohibited engagement of minors in service and after taking note of the fact that there were several Mazdoors in service, who had been engaged in such manner, issued the advisory of being careful in future.

All these petitioners have been given the Junior Selection Grade vide office orders dated 19.8.1999 and 2.8.1999 enclosed at Annexure 4 to the respective writ petitions and were further granted promotion to the post of Jamadar in Pay Band-1 in the scale of Rs.5200-20200 plus Grade Pay with effect from 7.2.2015 vide office orders dated 7.2.2015 enclosed at Annexure 6 to the writ petitions. It is in between this period that a decision was taken on the administrative side of the High Court to retire its employees on completion of 42 years of service since their initial engagement. The Employees Association represented before the Hon'ble Chief Justice which was rejected and communicated through the Registrar General vide letter dated 3.1.2013 at Annexure 5. The petitioners were made



to undergo a second medical examination for assessment of age and the records so produced by Mr. Lall demonstrates that the Medical Board estimated the age of petitioner no.1, Kapil Deo Roy, as 50 to 55 years as on 8.10.2013, the age of petitioner no.2, Islok, was assessed at 55 to 60 years while the third petitioner, Narayan Prasad, did not undergo any examination and the sole petitioner was also assessed the age between 55 to 60 years.

It is the case of the petitioners that by change of circumstances they again filed their representation and which was considered by the Hon'ble Chief Justice who chose to modify the earlier minute which sought to superannuate the employees on completing 42 years of service with clarification that the employees would be treated as aged 16 years on the date they joined the service and would be allowed to complete 44 years of service before they are made to retire. Copy of the minute of the Hon'ble Chief Justice is enclosed at Annexure 7. It is following the decision as present in the minute dated 30.7.2015 at Annexure 7 that the petitioners alongwith others were informed about their date of superannuation through letter dated 7.4.2017 at Annexure 8 to the writ petition but the sole petitioner in the second writ petition had been asked to superannuate on completion of 44 years of service with effect from 31.3.2017 as informed through letter of the Registrar General dated 31.3.2017 at



Annexure 8 to the second writ petition. While the sole petitioner in the second writ petition has been made to superannuate, in terms of the memo dated 7.4.2017 impugned at Annexure 8 the three petitioners in the first writ petition are to superannuate with effect from 31.1.2018, 30.4.2018 and 30.4.2018 respectively. Feeling aggrieved they are before this Court.

I have heard learned counsel for the parties and have perused the records.

There is no dispute on facts, rather the dispute is regarding the date of superannuation of the petitioners herein. According to the date of birth recorded in the service book, the petitioners in the two writ petitions would superannuate on 31.5.2027, 30.4.2024 and 31.1.2028 in so far as the three petitioners in the first writ petition is concerned and 31.5.2025 in so far as the sole petitioner in the second writ petition is concerned. It would be relevant to mention here that the date of superannuation so spelt out hereinabove and which finds mentioned in the impugned enclosure to the impugned order dated 7.4.2017 is not on the basis of disclosure made by the petitioners rather is founded on an assessment of age carried out by the In-charge Medical Officer, Primary Health Centre, Patna High Court at the time of their regular appointment against the post of Peon on 20.4.1989 vide Annexure 1. Obviously there was a dispute as regarding the age



of these petitioners at the time of their entry in service which prompted the High Court Administration to subject them to assessment on fitness which includes age assessment, before they were taken in regular service of the High Court on 20.4.1989 and when all these petitioners were held more than 20 years of age. None doubted the age assessment recorded by the Medical In-charge of the Hospital and the situation continued for almost a quarter of century when a doubt was raised on their age by the High Court on its administrative side when in the year 2013 they were again made to undergo medical test on age which classified petitioner no.1 in between the age of 50 to 55 years in the year 2013 while petitioner no.2 and the sole petitioner in the second writ petition have been classified as 55 to 60 years.

The records demonstrate that there are different set of age assessment available on records. In the undisputed circumstances where the petitioners were initially engaged as minor, the first assessment was done in the year 1989 when the petitioners were appointed against the post of Peon and according whereto the petitioners would superannuate with effect from 31.5.2027, 30.4.2024 and 31.1.2028 in so far as the three petitioners in the first writ petition is concerned and 31.5.2025 in so far as the sole petitioner in the second writ petition is concerned.

The second set is when the age assessment was carried out



following the decision taken by the High Court on the administrative side to superannuate employees on completion of 42 years of service in the year 2013 and according where to while petitioner no.1 was assessed between 50 to 55 years on 2.9.2013 and petitioner no.2 and the sole petitioner in the second writ petition as 55 to 60 years. The legal position on age determination where the assessment gives a range of age such as 55 years to 60 years, it is the lower age which is the determining factor as held by a Co-ordinate Bench of this Court in the case of Budhdeo Das v. the State of Bihar & ors. arising from C.W.J.C.No. 9430/2008. Now if the legal position so settled is applied to the age assessment carried out in 2013, while petitioner no.1 would continue until 2023, petitioner no.2 would continue until October, 2018 and similarly the sole petitioner would also continue until October, 2018.

The third assessment has been carried out by the High Court on the basis of the decision taken by the Hon'ble Chief Justice in the order dated 30.7.2015 at Annexure 7 to the writ petition, whereby the employees, who had entered service prior to 1998 and whose age was not supported by any documentary proof, were to be treated as 16 years on the date they joined the service and they were allowed to continue until completion of 44 years of service. It is counting 44 years from the initial engagement of these petitioners as daily wagers



that vide Annexure 8, their superannuation age has been determined as 31.1.2018, 30.4.2018 and 30.4.2018 in so far as the petitioners in the first writ petition is concerned and the sole petitioner in the second writ petition was made to superannuate on 31.3.2017 vide Annexure 8 to the second writ petition.

It is the argument of Mr. Sinha that once a decision has been taken by the Hon'ble Chief Justice to treat the employees as aged 16 years on the date they joined service and of allowing them 44 years of service, then since these petitioners were appointed on regular basis on 20.4.1989 vide Annexure 1 they should be allowed to continue until completion of 44 years of service with effect from 20.4.1989 i.e. until 19.4.2033. On the other hand Mr. Lal, learned counsel appearing for the High Court, would submit that this would result in absurdity because all these petitioners would be aged below 10 years on the date of their initial engagement and which is lawfully not acceptable.

The short argument advanced by Mr. Lall is that the High Court in tune with the decision taken by the Hon'ble Chief Justice has classified these petitioners as 16 years on the date of their initial engagement as a daily wager and whereafter they have been given a tenure of 44 years in tune with the decision of the Hon'ble Chief Justice present at Annexure 7 which suffers no infirmity.

The crucial issue which arises for consideration is what



should be the date on which these petitioners would be treated as having attained the age of 16 years. Whether it should be the date of their initial engagement as a daily wager or it should be the date of their respective regularization in the year 1977 or it should be the date of their regular appointment on the post of Peon on 20.4.1989. In my opinion, in the nature of issues noted, the argument of Mr. Sinha to treat 20.4.1989 as the relevant date for such purpose gains importance. The High Court has somewhere erred in treating these petitioners as aged 16 years on the date of their initial engagement as a daily wager in the year 1973 and 1974 because there is no dispute that all these petitioners were minor when they were engaged as a daily wager and which fact has been admitted by the Hon'ble Chief Justice way back in the year 1998 when this issue first attracted the attention of the High Court on its administrative side as manifest from the noting present at Annexure 3. In fact it is taking note of the manner of engagement of underage Mazdoors on daily wage basis which was not based on any criteria that Hon'ble Chief Justice issued directions that none below 18 years should be engaged even on daily wage basis. This decision was taken on 24.7.1998 and confirms engagement of minors prior thereto. In the undisputed circumstances existing where engagements were made of underage Mazdoors until 1998, the minutes of the Hon'ble Chief Justice as present in his order dated



30.7.2015 gains importance because it takes note of the following aspects of the matter:

- (a) Prior to 1998, minors were inducted in service.
- (b) There was no prohibition against the employment of persons below 18 years when they joined service.
- (c) A balance had to be made between the extremity of reducing their service on the basis of age determined by the Medical Board or to permit them to continue indefinitely.
- (d) The consideration was to be extended to those who entered service before 1998 because it is for the first time on 14.7.1998 that the Hon'ble Chief Justice while accepting appointment of minors, had determined the minimum age of 18 years for entry in service.

It is undisputed rather it is a matter of record that these petitioners alongwith others had been employed as minors. In such admitted circumstances the argument advanced by Mr. Piyush Lall that the engagement of these petitioners as minors was unacceptable as it was de hors the Labour Laws even if sound on principle, did not apply to the facts existing. In fact even if these engagements were



dehors the age limit prescribed in the Labour Laws, it is an open admission of an authority of the Hon'ble Chief Justice that these petitioners had been engaged while they were minors. Now if the High Court on the administrative side has consciously engaged these employees while they were yet minors and the reason gathered from the records is that there was no age prescription at the relevant time, which for the first time was introduced only on 24.7.1998 by the Chief Justice vide Annexure 3, they certainly would not be permitted to undo the settled position by enhancing the age of these employees. The Hon'ble Chief Justice in the minutes present at Annexure 7 has correctly observed that a balance has to be maintained in between the unending continuity or a premature culmination of service but foisting an age on any employee has to rest on sound reasons.

In my opinion, even if there were issues as regarding age assessment of these petitioners, it should have been put at rest in view of the assessment made at the time of their regular appointment on 20.4.1989 when they were appointed against the post of Peon. In my opinion, once the High Court has taken a positive decision to accept the age assessed by the In-charge Medical Officer, Primary Health Centre, Patna High Court and after being satisfied, recorded the same in the service book of these petitioners, a mere second opinion on the issue would not vest any jurisdiction in the High Court to doubt the



age of employee as recorded in the service book in the year 1989 i.e. almost a quarter of century ago. The opinion of the Hon'ble Chief Justice as present in his minutes dated 30.7.2015 may be extendable in the case of such of the employees who had no age support at the time of their initial appointment in regular service but in so far as these petitioners are concerned, the counter affidavit itself extends support to their date of birth recorded in their service book on the date of their regular appointment against the post of Peon on 20.4.1989 and cannot be interfered with by a mere change of opinion. Annexure 'A' to the counter affidavit filed in the two writ petitions on behalf of the High Court would confirm that all these petitioners were subjected to medical assessment on fitness before they were taken into regular service of the High Court against a regular post of Peon and the age assessed by the In-charge Medical Officer was never doubted by the High Court on its administrative side to subject these petitioners for a review assessment. A quarter of century having passed, I find the stand taken by the High Court in support of impugned orders failing on sound reasoning. It is not a case where these petitioners were being made to retire under Rule 74 of the Bihar Service Code as a piece of dead wood rather it is merely on their continuity and/or their physical appearance with no expression found on their efficiency, which has led to the situation in hand.



In my considered opinion once these petitioners had been subjected to medical fitness assessment and during which their age was also assessed by the In-charge Medical Officer of the P.H.C., Patna High Court at the time of regular appointment in High Court service against the post of Peon vide Annexure 1 on 20.4.1989 with their confirmation coming three years later on 15.10.1992 vide Annexure 2, their service book having been opened on the basis of such assessment of age and which has continued for almost a quarter of century, it did not warrant any interference with their service tenure by way of review.

For the reasons so recorded, the order of the High Court as communicated through the Registrar (Establishment) bearing Memo No. 24210-20 dated 7.4.2017 in so far as it concerns the petitioners in these two writ petitions at serial no. 9, 10 and 12 in so far as the first writ petition is concerned and serial no.1 in so far as the sole petitioner in the second writ petition is concerned, cannot be upheld and is accordingly set aside. The petitioners shall continue in service on their respective post and would superannuate as per the date of birth so recorded in their respective service book.

Since the sole petitioner in the second writ petition has been made to superannuate, he shall be allowed to join his duty within six weeks of the date of receipt/ production of a copy of this order and



would be entitled to continuity of service so far as calculation of superannuating benefits is concerned but in so far as the back wages is concerned, I am not persuaded to grant the same on the principle of ‘no work no pay’.

The two writ petitions are allowed with the directions aforementioned.

Surendra/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2018
Transmission Date	NA

