

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 939 of 2006

=====

1 Ganeshi Mahto
2 Shive Shankar Mahto
3 Bankelal Mahto, sons of late Soman Mahto, residents of Village – Mutlupur,
PO – Mutlupur, PS – Piyar, District - Muzaffarpur

.... Petitioner/s

Versus

1 The State of Bihar
2 The Collector –cum- District Magistrate, Muzaffarpur
3 The Superintendent of Police, Muzaffarpur
4 The Deputy Collector, District General Section, Collectorate, Muzaffarpur
5 The Deputy Collector, Land Reforms, West Sub Division, Muzaffarpur
6 The Sub Divisional Officer, East Sub Division, Muzaffarpur
7 The Circle Officer, Bandara Block, District – Muzaffarpur
8 The Officer-in-charge, Police Station – Pear, Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Ashok Kumar Choudhary I, Advocate

For the Respondent/s : N O N E

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 13-03-2018

Heard learned counsel for the petitioner. None appears
on behalf of the State.

2 The writ petition was filed for setting aside the order
of the District Magistrate, Muzaffarpur dated 31.03.2005 bearing
Memo No 442 whereby and where under, the petitioner has been
forced to retire with effect from 31.03.2000 treating his date of
retirement to be so. The District Magistrate has directed that for the
period after 31.03.2000 till issuance of Annexure 1, whatever salary
has been paid to the petitioner, will be subject to adjustment to the



admissible limit of daily wages to the petitioner for the said period at the rate prescribed for skilled labourer. Such order has been issued in spite of the fact that the petitioner's date of birth, as entered in the service book as per case of the petitioner is 04.07.1947, on basis whereof the original petitioner's correct date of superannuation would be 31.03.2007.

3 It may be noted that under order dated 19.03.2012, this Court, in view of the demise of the original writ petitioner, namely, Soman Mahto on 26.03.2011, has allowed substitution of the legal heirs, whose names now appear as the writ petitioners in the instant writ petition.

4 Brief facts leading to filing of the writ petition is that while original writ petitioner was working as *Chowkidar*, a complaint was made against him by one person by the name of Ram Balak Trivedi with whom the original writ petitioner was contesting a proceeding under Section 144 of Criminal Procedure Code to the extent that in the said proceedings, he has disclosed his age to be more than what is shown in the service book by the petitioner. On such complaint, an enquiry was conducted by the Circle Officer. The report dated 20.05.2002 submitted by the Circle Officer, which is Annexure B to the counter affidavit, has corroborated the date of birth entered by the petitioner in his service book that is 04.07.1947 as



correct.

5 The said complainant (Ram Balak Trivedi) has continued with his complaints against the petitioner where after, the petitioner was subjected to a Medical Board also. On 27.03.2003, the Medical Board was held by the Civil Surgeon –cum- Chief Medical Officer and the Medical Board opined that the age of the petitioner was about 56 years. Thus, the Medical Board also corroborated the date of birth entered by the petitioner in his service book that is of July, 1947.

6 The District Magistrate, even in spite of the opinion of the Medical Board, was not satisfied with the findings and directed the Civil Surgeon –cum- Chief Medical Officer to constitute a fresh Medical Board to reascertain the petitioner's date of birth. The same was resisted by the Civil Surgeon –cum- Chief Medical Officer who, vide Memo No 1857 dated 30.08.2003 (Annexure 4 of the reply to the counter affidavit) informed the District Magistrate that in view of the provisions of Rule 442 of the Bihar Health Manual, a fresh Board can only be constituted under special circumstances and at the instance of the Government. In essence, the Civil Surgeon –cum- Chief Medical Officer refused to constitute a fresh Medical Board for reascertaining the petitioner's date of birth.

7 The petitioner earlier, in these proceedings, had made



a submission that he had never received any notice for appearing before the second Medical Board for determination of his age and that, without any basis, the second Medical Board has determined his age as 65 years on 31.03.2005. Since there was no averment made in the counter affidavit filed by the State in respect of the said assertions, this Court, vide order dated 07.08.2007, had granted the State an opportunity to place on record whether any special permission was taken from the State Government for constituting a second Board and as to whether the petitioner had appeared before the said Board. The supplementary counter affidavit has been filed thereafter wherein now stand has been taken that it is wrong on the part of the petitioner to contend that he was superannuated on the basis of the finding of the second Medical Board as the second Medical Board was never constituted.

8 In essence, the stand of the State is that the petitioner's age had been ascertained and the impugned order has been issued to forcefully retire him with effect from 31.03.2000 and to make certain adjustments/recovery of the salaries received by the petitioner after the said date on the basis of an enquiry which was conducted against the petitioner by issuing charge memo. Specific case of the petitioner in the instant writ petition is that no charge memo has been served on the petitioner and he was never subjected to



any proceeding in accordance with law. Specific submission in this respect has been made by the petitioner in paragraph 16 of the petition and in the counter affidavit filed on behalf of the respondent-authorities, the same has not specifically been denied. The only averments made in the first counter affidavit with respect to the proceedings is that the petitioner had appeared in the departmental proceedings and prayer for 10 days time to file the show cause and, as such, the petitioner cannot be permitted to contend that no charge memo was served on him. Such statements have been made without reference to any document whatsoever on record. Nothing has been placed in the counter affidavit to show that such an application, as alleged, has been filed by the petitioner in the departmental proceedings because no records whatsoever have been produced in relation to the alleged enquiry pursuant to which the impugned order dated 31.03.2005 has been issued.

9 In view of the facts considered above, the irresistible conclusion on the basis of the record, as available in the instant proceedings, is that the finding in the first enquiry by the Circle Officer with respect to the petitioner's age was corroborative of entries in that respect made in his service record as 04.07.1947. The three Members Medical Board headed by the Civil Surgeon –cum- Chief Medical Officer had given an opinion in consonance with date



of birth of the petitioner in the service book at the time of joining that is 04.07.1947. The impugned order, though alleges to be pursuant to an enquiry based on charge memo so as to direct forceful retirement, treating the petitioner to be 65 years of age on the date of order, is without any basis. Neither the charge memo has been placed on record nor any chit of paper has been shown to suggest that in fact the petitioner was subjected to any proceeding prior to issuance of Annexure 1 that is the impugned order. Even in the impugned order (Annexure 1), it has been recorded that the findings are being recorded on the basis of documents available in the file. Such findings, detrimental to the petitioner's interests which are likely to visit him with civil consequences could not have been recorded without compliance with the principles of natural justice and fairness and without issuing a charge memo and conducting a departmental enquiry in a duly constituted departmental proceeding. The same has not been done as is apparent from the records in the instant writ proceedings.

10 The findings in Annexure 1 are, therefore, unsustainable in the eye of law and are hereby quashed. As a result of quashing of Annexure 1, the position that emerges is that the petitioner has wrongly been denied the opportunity to serve till his age of retirement that is July, 2007. Since, till issuance of the impugned



order, the original petitioner has been paid his full salary, therefore, considering the facts and circumstances of the instant case, this Court is of the opinion that the interest of justice would be served by awarding the legal heirs of the original writ petitioner 25% of the salary due to the petitioner for the period after issuance of Annexure 1 till his date of superannuation that is July 2007. The same shall be paid to the petitioners within a period of three months from the date of receipt/production of a copy of this order.

11 The writ petition is allowed to the extent indicated hereinabove.

12 The original writ petitioner would be treated in service till his actual date of superannuation that is 31.07.2007 and would be entitled to all pensionary benefits.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2018
Transmission Date	NA

