

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16038 of 2010

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RAM KHELAWAN PASWAN S/O LATE RAMPHAL PASWAN R/O VILL.-
THAM PATHARI, P.O.- AIER, P.S.- ATRI, SUB-DIVISION - NIMCHAK
BATHANI, DISTT.- GAYA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE HOME SECRETARY, GOVERNMENT OF BIHAR, PATNA
3. THE DEPUTY SECRETARY DEPARTMENT OF HOME (POLICE),
GOVERNMENT OF BIHAR, PATNA
4. THE DISTRICT MAGISTRATE, GAYA
5. THE DEPUTY COLLECTOR IN-CHARGE GENERAL AND
ADMINISTRATION, GAYA COLLECTORATE, GAYA
6. THE SUPERINTENDENT OF POLICE, GAYA
7. THE CIVIL SURGEON-CUM-CHIEF MEDICAL OFFICER, GAYA
8. THE CIRCLE OFFICER, ATRI, DISTT.- GAYA
9. THE OFFICER IN-CHARGE ATRI POLICE STATION, DISTT.- GAYA
10. THE ACCOUNTANT GENERAL, BIHAR (A & E), BIRCHAND PATEL
PATH, PATNA

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Roy
For the Respondent/s	:	Mrs. Shilpa Singh, GA-12
For the Accountant General	:	Mrs. Namrata Mishra

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 20-06-2018

The present writ petition has been filed for directing the Respondents to superannuate the petitioner from his services on the basis of the date of birth recorded in his service book as 30.11.1948 which is based on the assessment made by the Medical Board in its meeting held on 30.11.1994 as 46 years.

Shorn of the unnecessary details, the present case is based on the admitted fact that in the service book of the petitioner the date of birth has been recorded as 30.11.1948, on



the basis of age determined by the Medical Board in its meeting held on 30.11.1994 as 46 years whereas the Respondents have subsequently superannuated the petitioner with effect from 11.10.1998 vide letter No. 636 dated 18.05.2004 on the basis of his date of birth given in the so-called deposition register as the year 1940.

It is a trite law that it is not open to the employer to change or alter the date of birth of an employee after a considerable lapse of time and in any case, the alteration in the date of birth cannot be made unilaterally without giving an opportunity of hearing to the employee. Reference in this regard be had to the judgments reported in *(1981) 3 SCC 544 (Sarjoo Prasad Vs. General Manager and Anothers and the one reported in AIR 1967 SC 1269 (State of Orissa vs. Dr. (Miss) Binapani Dei and Ors)*. Even *Rule 96 of the Bihar Finance Rules* provides that under normal circumstances, the date of birth recorded in the service book of the employee cannot be altered except in the case of clerical error and that too, upon the order of the State Government.

In the present case, the Respondents had themselves constituted a medical Board and thereafter, the date of birth was recorded in the service book in the year 1999 as 30.11.1948.



There has been no allegation of any clerical mistake or tampering / interpolation of the date of the birth of the petitioner herein as recorded in the service book, hence, there was / is no reason for the respondents to have interfered with the same at the fagend of the career of the petitioner i.e. in the year 2004 when they have made the petitioner to superannuate with effect from 11.10.1998.

In view of the facts and circumstances of the case especially in view of the delay on the part of the petitioner in approaching this Court, the learned counsel for the parties are in agreement that the present case can be disposed of with a direction to the Respondent-authorities to treat the length of service of the petitioner by taking into account the date of birth of the petitioner to be 30.11.1948 and accordingly, calculate the retiral dues on the basis of the last pay drawn as on 30.11.2006, which would have been the date of superannuation in case the date of birth, as recorded in the service book, was taken into account. It is further agreed that the length of service rendered by the petitioner for the purposes of calculation of the retiral dues of the pensionary benefits would be calculated considering the date of superannuation of the petitioner to be 30.11.2006. The learned counsel for the parties have further agreed that



consequently, the petitioner shall not be entitled to back wages for the period the petitioner had not worked.

Having regard to the facts and circumstances of the case, the present writ petition is partly allowed and disposed of with the aforesaid directions.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
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