

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10791 of 2017

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Kedar Sah, Son of late Bano Sah, Resident of Village- Bariyahi, P.S. -
Barauni, District- Begusarai. At Present posted as Pump Attendant, Executive
Engineer(Civil), Civil Division, Punaichak, Patna.

... .. Petitioner

Versus

1. Bihar State Power Generation Company Limited through General Manager-
cum- Chief Engineer, Barauni, Thermal Power Station, Begusarai.
2. The Secretary, Bihar State Power Generation Company Limited, Patna.
3. General Manager-cum-Chief Engineer, Bihar State Power Generation
Company Limited, Barauni Thermal, Power Station, Begusarai.
4. Executive Engineer(Civil) Civil Division, New Punaichak, Patna.
5. Company Limited, Barauni Thermal Power Station, Begusarai.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate Mr. Arvind Kumar Sharma Ms. Kumari Neha, Advocate Mrs. Ritika Rani, Advocate Mr. Vijay Kumar Vimal, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Senior Advocate Mr. Vijay Kumar Verma, Advocate Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 12-07-2018

Heard learned counsel for the petitioner and
learned counsel for the Bihar State Power Generation Company
Limited.

2. In the present case, a small issue is for
consideration as to whether the petitioner would superannuate in



terms of the entry made in the service book or on the basis of the age assessed by the Medical Board constituted by the erstwhile Bihar State Electricity Board and the petitioner had appeared before the said Medical Board at the behest of the erstwhile Bihar State Electricity Board.

3. The petitioner was working as Coal Unloader in Barauni Thermal Power Station. Later on, appointed as Pump Attendant in 1989 on temporary basis, at that time, his date of birth was recorded. The petitioner, at the time of entry as Coal Unloader, had submitted his medical certificate, wherein it has been recorded, as per his statement his age recorded as 20 years, but the doctor found him of 25 years. But later on, the Deputy Director, Barauni Thermal Power Station, vide letter no.756 dated 26.04.2000 has directed the petitioner to appear before the Medical Board at Punaichak, Patna, for assessment of his age. Accordingly, he appeared and his date of birth has been recorded as 34-36, average 35 years as on 02.06.2000.

4. Learned counsel for the petitioner submits that after the assessment of his age by the Medical Board now the petitioner cannot be made to retire or superannuate on the basis of date of birth recorded in the service book and as such, the action of the Holding Company made him retired on the basis of



date of birth recorded in the service book, is illegal in view of the assessment of the age by the Medical Board. He further submits that as per the assessment made by the Medical Board, the petitioner would retire in the 2023, but he has been prematurely retired on 30.06.2017.

5. Learned counsel for the Power Generation Company submits that in terms of Bihar Finance Rules, Part-I, Rule-96, if any objection with respect to date of birth is to be raised by him he ought to have raised within 10 years of the service, but he has raised this objection after superannuation, is not acceptable.

6. In the present case, the situation is otherwise, there is no question of raising objection with regard to the age recorded in the service book as the erstwhile Bihar State Electricity Board itself constituted the Medical Board to assess the correctness of the age entered in the service book and for proper assessment of the age the petitioner was directed to appear before the Medical Board for verification of his age, now the Power Generation Company cannot turn round and say that the age assessed by the Medical Board is not binding on the Power Generation Company. When the action has been taken by the employer, now the employer cannot say that he would act on



the basis of the statement recorded in the service book not on the basis of age assessed by the Medical Board as principle of estoppel would apply.

7. In such view of the matter, the writ petition is allowed. This Court declares that the petitioner would retire in terms of the age determined by the Medical Board as 35 years as on 02.06.2000 and will also entitle to reinstatement in service with back wages.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.07.2018
Transmission Date	N/A.

