

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10314 of 2009**

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Nand Lal Singh Son of late Ram Suresh Singh Resident of Village- Chhatni, P.S.  
Kargahar, District- Rohtas.

.... .... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Irrigation Department, Patna.
2. The Secretary Water Resources Department of the State Govt. of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Dehri-on-Sone.
4. The Executive Engineer, Sone Canal Division, Dehri-on-Sone.
5. The Junior Engineer, Irrigation Department, Sub Division, Basawan, Kaimur.

.... .... Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. Ashok Kumar Choudhary  
Mr. Bhola Kumar  
Mr. Akshansh Ankit

For the Respondent/s : Mr. Anuj Kumar, A.C. to SC-12

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 27-07-2018**

The present petition has been filed for directing the respondents to quash the order passed by the Executive Engineer dated 19.05.2009, whereby and where under the original petitioner has been declared to have retired with effect from 31.01.2001. The original petitioner has further prayed for directing the respondents to reinstate the original petitioner with all consequential benefits.

The brief facts of the case are that the original petitioner was appointed as a Class-IV employee in the office of the Executive Engineer, Sone Canal Division, Buxar, vide letter dated 28.09.1973 and he joined on 01.10.1973. Thereafter the original petitioner was



transferred from one place to another. It is the contention of the original petitioner that date of birth has been mentioned in his service book as 05.02.1952 on the basis of the school leaving certificate issued by the headmaster of the Central Basic School, Bahuara vide T.C. No. 17 dated 15.01.1965. It is stated that the petitioner is only Class-VII pass and thereafter he could not pursue his further studies.

It appears that on the basis of a complaint made by unknown person, the salary of the original petitioner was stopped from the month of March, 2008. Thereafter, the Executive Engineer, Dehri Division, Dehri by the impugned letter dated 19.05.2009 had declared the petitioner to have retired retrospectively with effect from 31.01.2001 on account of his date of birth being found to be 22.01.1943. The learned counsel for the petitioner has submitted that the original petitioner was appointed in the year 1973 and immediately thereafter his service book was opened on 22.12.1974 and the authorities had recorded his date of birth as 05.02.1952 on the basis of the school transfer certificate no. 17 dated 05.01.1965 issued by the headmaster, Central Basic School, Bahuara. It is submitted that the respondent authorities are precluded from altering the date of birth of the original petitioner in view of Rule 96 of the Bihar Financial Rules. It is further submitted that the petitioner was never afforded any opportunity of hearing nor the letter of the Deputy



Secretary, Vigilance, Bihar School Examination Board, Patna dated 05.12.2008, on the basis of which the impugned order dated 19.05.2009 has been passed, was ever made known to the petitioner much less any defence of the petitioner was sought with regard to the said letter dated 05.12.2008, hence the respondents have acted in violation of the principles of natural justice while fixing the date of birth of the original petitioner as 22.01.1943 unilaterally.

Per contra, the learned counsel for the respondents has submitted that the photo copies of the tabulation register of the Bihar School Examination Board pertaining to the Annual Secondary School Examination, 1962, Kundra Centre shows the date of birth of the original petitioner to be 22.01.1943, hence the petitioner had misrepresented to the respondent authorities regarding his actual date of birth and consequently the petitioner was also asked to submit the school transfer certificate, on the basis of which his date of birth was recorded in the service book but the petitioner had failed to do so, hence the respondent authorities cannot be faulted in declaring the petitioner to have retired with effect from 31.01.2001 treating his date of birth as 22.01.1943.

I have heard the learned counsel for the parties and perused the materials on record. Firstly, Rule 96 of the Bihar Financial Rules, provides that ones the date of birth is recorded in the service record of



the government servant, the same cannot be altered, except in the case of clerical error, without the order of the State Government. In the instant case there is no clerical error and moreover there is no order of the State Government, hence the Executive Engineer, Dehri Division has passed an illegal order dated 19.05.2009 declaring the original petitioner to have retired with effect from 31.01.2001. Secondly, the respondent authorities have failed to supply the letter of the Deputy Secretary, Vigilance , Bihar School Examination Board, Patna dated 05.12.2001, on which reliance has been placed for declaring the petitioner to have retired with effect from 31.01.2001 and in absence thereof, the petitioner has neither been heard nor has been granted an opportunity to submit his defence resulting in violation of the principles of natural justice, hence on this ground alone, the impugned order dated 19.05.2009 is fit to be set aside. Another aspect of the matter is that when the respondent authorities, at the time of opening of the service book in the year 1974, had recorded the date of birth as 05.02.1952, on the basis of the school transfer certificate dated 05.01.1965 issued by the headmaster, Central Basic School, Bahuara, there was no occasion to revise their opinion and re-fix the date of birth of the petitioner as 22.01.1943. The tabulation register of the Bihar School Examination Board pertaining to Annual Secondary School Exam, 1962, relied upon by the respondent in their counter



affidavit to show that the actual date of birth of the petitioner is 22.01.1943 is also misplaced inasmuch as the said document has never been put to the original petitioner, seeking his response to the same, hence the same cannot be relied upon at this juncture to non-suit the original petitioner in view of the settled law to the effect that the validity of an order based on certain reasons so mentioned in the same and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The law regarding the permissibility of altering date of birth is no longer *res integra* and has been decided by the Hon'ble Apex Court in a catena of decisions, some of which are the ones, reported in ***AIR 1967 SC 1269 (State of Orissa vs. Dr. (Miss) Binapani Dei)***, one reported in ***(1977) 3 SCC 425*** as also the one reported in ***(1981) 3 SCC 544***. Reference be also had to the judgment of the Hon'ble Supreme Court reported in ***1995(4) SCC 172 [Burn Standard Co. Ltd. & Ors. vs. Dinabandhu Majumdar & Anr.]*** and ***(2014) 6 SCC 434 [Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Company Limited & Anr.]***.

At this juncture, it would be relevant to quote paragraph no.8 and 12 of the judgment rendered by the Apex Court in the case of ***State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*** reported in ***AIR 1967 SC 1269***, paragraphs 8 and 12 whereof are reproduced herein below:-

*“8. The date of birth disclosed by the first respondent at the time*



*when she entered service was accepted by the State. She claims that a statement was made by her father on that occasion relying on which the date of her birth was determined and entered in the service register, and thereafter the State sought arbitrarily to re-fix the date of her birth. In considering that plea the relevant Service Rules regarding superannuation may be noticed in the first instance. Rule 13 of the Orissa Civil Services (Classification Control and Appeal) Rules, 1962, sets out the penalties which may be imposed "for good and sufficient reasons" on a Government servant and the seventh penalty is "compulsory retirement". But the Explanation to the rule states that "compulsory retirement" of a Government servant in accordance with the provisions relating to his superannuation or retirement is not a penalty within the meaning of the rule. Rule 459(b) of the Civil Service Regulations provides that officers, other than ministerial, who have attained the age of 55, should ordinarily be required to retire on completion of that age. By notification, dated May 21, 1963, the age of superannuation was fixed at 58 in respect of all public servants who were to retire after December 1, 1962.*

- 12. It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."*

Admittedly in the present case the documents sought to be relied upon by the respondents for the purposes of re-fixing the date of birth of the original petitioner were neither supplied to the original petitioner nor any response was sought with regard to the said



documents from the original petitioner so as to enable the original petitioner to put forward his defence. Hence, on this ground alone the impugned order dated 19.05.2009 is fit to be set aside since the same has been passed in violation of the principles of natural justice. This aspect of the matter has been aptly dealt with by the Hon’ble Apex Court in the case of **Dr. (Miss) Binapani Dei & Ors.** (supra).

It may be mentioned that the original petitioner has already died on 03.06.2012 where after his legal heirs have been substituted in the present proceedings.

For the reasons mentioned herein, the writ petition is allowed and the impugned order dated 19.05.2009, re-fixing the date of birth of the original petitioner as 22.01.1943 is set aside and it is directed that the date of birth of the petitioner be treated as 05.02.1952 for all purposes and accordingly the consequential benefits be paid to the legal heirs of the original petitioner.

**(Mohit Kumar Shah, J)**

S.Sb/-

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