

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18225 of 2014

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Taj Mohammad son of late Md. Razak, resident of village and P.O. Nadwan, P.S. Dhanarua, District Patna, presently residing at Chhoti Shekhana, P.S. Town Biharsharif, District Nalanda

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary to the Government, Department of Energy, Sicha Bhavan, Old Secretariat Campus, Patna
2. The Superintending Engineer, Electrical Works Circle, Department of Energy, Government of Bihar, New Secretariat, Patna
3. The Electrical Executive Engineer, Electrical Works Division, Patna, Bailey Road, Patna
4. The Accountant General, Bihar, Veerchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalan Kumar Singh, Advocate
For the State	:	Mr. Sajid Salim Khan, SC 25
For the Respondent No. 4	:	Mrs. Nivedita Nirvikar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-04-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the following

reliefs:

“ (i) That the order contained in Memo No. 650 dated 27.03.2014 and Letter No. 364 dated 11.9.2014 passed by the Electrical Executive Engineer, Electrical Works Division, Patna be quashed.

(ii) That an appropriate writ or direction be issued commanding the respondents to consider and make payment of entire amount of leave encashment, gratuity, Life Insurance, General



Provident Fund and pension with interest thereon due to delayed payment by the respondent.

(iii) That an appropriate writ or direction be also issued to stay the operation of said impugned orders till the final adjudication of this writ application.

(iv) Any other relief or reliefs may be granted to the petitioner for which he is entitled in law.”

3. The admitted facts are that the petitioner joined service in the year 1986 on Class IV post as Mazdoor. At the relevant time he did not produce any document relating to his date of birth and, thus, the authorities referred him to the Medical Board and in terms of the opinion rendered, his date of birth was fixed as 04.12.1956. However, in the year 1992, when the service book was opened, the entry with regard to the date of birth has been recorded as 01.01.1948 which was based on the recorded date of birth of the petitioner in his matriculation certificate which was prior to him joining service. It appears that the authorities being unmindful of the same, allowed the petitioner to continue in service and finally by order dated 22.07.2010 of the Junior Electrical Engineer, he was informed that he should be treated to have retired with effect from 17.07.2010. When the petitioner was to be paid his retiral benefits



the authorities realized that as per his date of birth recorded in his service book which was based on the entry made in the matriculation certificate, he was to have retired and could not have worked beyond 31.12.2006 and, thus, for the period he had worked in excess, that is, 3 years and 9 months, the benefits taken by him on account of salary etc. was held to be recoverable and accordingly the same has been made from his gratuity. The petitioner has assailed the same in the present writ petition.

4. Learned counsel for the petitioner submitted that there was no fraud or misrepresentation on his part and as and when he was called upon to produce the matriculation certificate he did that and thereafter in the service book, which was prepared in 1992, his date of birth has been recorded as 01.01.1948. It was further submitted that the Courts have held that for the period a person works, may be beyond his date of superannuation, he is required to be paid and the salary taken by him cannot be recovered.

5. Learned counsel for the State submitted that the matter is not so simple. It was submitted that initially also the petitioner had moved the Court for the same relief in CWJC No. 913 of 2013 in which a co-ordinate Bench of this Court by order dated 22.02.2013 had held that the petitioner could not have continued beyond the date on which he was required to



superannuate in terms of his date of birth recorded in the matriculation certificate and further that a decision was required to be taken with regard to recovery from the petitioner and the excess salary drawn for the period he worked beyond such correct date of superannuation. It was submitted that the authorities, in terms of the observations of the Court in the said case have passed the order and, thus, the same has some sort of judicial approval. Learned counsel submitted that the petitioner cannot claim innocence for the reason that prior to the date of entry into service, he had passed the matriculation examination for which he had already a certificate and which recorded his date of birth as 01.01.1948. It was further submitted that the authorities in view of no document with regard to his date of birth being produced by the petitioner had referred him to the Medical Board and, thus, such reference will not be of any help or use to the petitioner. Learned counsel submitted that even if it is taken that the authorities ought not to have allowed him to continue beyond the date as per his matriculation certificate still, the same can at best be considered to be an error or a mistake but the conduct of the petitioner is not proper.

6. Having considered the matter, the Court does not find any merit in the writ petition. The Court is in agreement with the submissions of learned counsel for the State that the conduct of



the petitioner is nothing short of fraud on the system. He being a matriculate and aware of his date of birth which is recorded in the matriculation certificate, was required to be honest before the authorities and disclose such date of birth and also produce the certificate. Not doing so, and only upon the authorities calling upon him, having produced the same, it was recorded in the service book in the year 1992. However, there appears to be some communication gap as the authorities seem to have overlooked his date of birth as recorded in the service book and made him to continue for some period, but that would not fasten them with the liability to make payment for such period, as the onus was on the petitioner and he has, at the cost of repetition, played a fraud on the system. The law being settled that the fraud vitiates all subsequent actions, the Court has no hesitation to record that the orders passed and the stand taken by the authorities are correct and justified.

7. For reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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