

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14960 of 2017

=====

Indradeo Manjhi, Son of Late Gopichand Manjhi, Resident of Village- Daudpur,
Police Station- Daudpur, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Govt. of Bihar.
2. The District Magistrate, Saran at Chapra.
3. The Superintendent of Police, Saran at Chapra.
4. The Additional District Magistrate, Saran at Chapra.
5. The Circle Officer, Manjhi, Saran.
6. The Officer-in-Charge, Daudpur Police Station, Saran.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Satya Prakash

For the Respondent/s : Mr. MANISH KUMAR – GP 4

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 18-05-2018

The present writ petition has been filed for quashing the letter contained in Memo No. 43 dated 2.2.2017 issued by the Circle Officer, Manjhi (Saran) whereby the petitioner has been informed that he stands superannuated w.e.f. 31.8.2016 as his age has been assessed as 40 years on 9.8.1996 by the Medical Board. It has been further prayed for quashing the letter contained in Memo No. 670 dated 31.7.2017 issued by the District Magistrate, Saran at Chapra whereby the representation of the petitioner for correction of age/ extension of the date of superannuation has been rejected. Lastly, it has been prayed for extension of the date of superannuation of the petitioner from 31.8.2016 to 31.8.2020 on the basis of his date of birth recorded in his service book as 30 years on 24.8.1990 by the respondents after assessment of his age by the Medical Officer, PHC, Daudpur.



2. The short facts of the case are that the petitioner was appointed as Chowkidar on 14.9.1988 and his services were regularized in the year 1990 whereby the age of the petitioner along with others was assessed as 30 years on 24.8.1990 by the Medical Officer, PHC, Daudpur, Chapra and, accordingly, a certificate was issued in this regard by the said Medical Officer and then the service book of the petitioner was opened by the Circle Officer, Manjhi, Saran and the date of birth of the petitioner was recorded as 30 years as on 24.8.1990.

3. The petitioner is said to have been working continuously and he is sated to have an unblemished career, however, suddenly vide letter dated 13.1.2017 the petitioner was informed by the Officer-in-charge of Daudpur police station that according to the last assessment of age by the Medical Officer, his age has been found to be 40 years as on 9.8.1996, hence he is to retire on 1.9.2016, which has already expired, thus action would be taken against him. Thereafter, the Circle Officer, Manjhi (Saran) informed the petitioner vide letter dated 2.2.2017 that he has been superannuated w.e.f. 31.8.2016 since his age has been assessed to be 40 years as on 9.8.1996 by the Medical Officer. The petitioner is stated to have then filed a representation before the District Magistrate, Saran, however, the same was rejected by letter dated 31.7.2017 issued by the District Magistrate, Saran.



4. The learned counsel for the petitioner submits that once the respondents have found the age of the petitioner to be 30 years as on 24.8.1990 and have recorded the same in his service book, the issue regarding age determination cannot be raised again after a lapse of more than 25 years.

5. Per contra, the learned counsel for the respondents has submitted that since the age of the petitioner has been found to be 40 years as on 9.8.1996 by the Medical Officer, there is no reason as to why the petitioner should not stand superannuated w.e.f. 31.8.2016. It is further stated in the counter affidavit filed by the respondents that after the Medical Board had assessed the age, the then S.H.O., Daudpur vide letter dated 13.1.2017 had informed the Circle Officer, Manjhi (Saran) for doing the needful and then the petitioner was informed about his new date of birth by S.H.O., Daudpur by a letter dated 2.2.2017 whereafter the Senior Deputy Collector, General Section by his letter dated 24.7.2017 gave instructions to the Circle Officer, Manjhi that according to the Medical report, the date of birth of the petitioner has been presumed to be 9.8.1956 and, accordingly, his date of retirement has been fixed as 31.8.2016.

6. I have heard the learned counsel for the parties and perused the materials on record. At the outset, it may be relevant to reproduce Rule 96 and 97 of the Bihar Financial Rules herein below:-

“96. Every person newly appointed to a service or post under Government should at the time of the appointment declare the date of his birth by the



Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under rule 97 should be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered, except in the case of a clerical error without the orders of the State Government.

97. (1) If a Government servant is unable to state his exact date of birth but can state the year, or year and month of birth, the 1st July or the 16th of the month respectively, may be treated as the date of his birth.

(2) If he is only able to state his approximate age, his date of birth may be assumed to be the corresponding date, after deducting the number of years representing his age from his date of appointment.

(3) When a person who first entered Military employ is subsequently employed in a civil department, under the State Government, the date of birth for the purpose of the civil employment should be the date stated by him at the time of attestation or if at the time of attestation he stated only his age, the date of birth should be deduced with reference to that age according to the method indicated in sub-paragraph (2) above."

7. The law on the subject matter under consideration has been settled by the Hon'ble Apex Court by various judicial pronouncements and the first one of them, which comes to my mind, is a case reported in *AIR 1967 SC 1269* [**State of Orissa v. Dr. (Miss) Binapani Dei & Ors.**], 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."

8. The next case, which is relevant for the present purposes, is the one reported in (1977)3 SCC 425 [**R.S. Kallolimath v. State of Mysore and Anr.**], paragraph no. 14 whereof is reproduced herein below:-

"14. We have heard learned Counsel for the parties. Although in view of the decision of this Court in *State of Orissa v. Dr (Ms) Binapani Dei*¹ it can no longer be disputed that the State is not precluded merely because of the acceptance of the date of birth of its employee, in the service register from holding an enquiry if there exist sufficient reasons for holding such enquiry and refixing his date of birth, it passes our comprehension as to why after granting an extension of service to the appellant presumably in terms of its Memorandum dated August 14, 1958, the Government retraced its steps and suddenly terminated the services of the appellant on March 31, 1959. Nothing tangible has been brought to our notice which could have justified the



Government to deprive the appellant of the benefit of the clear and categorical directions contained in its aforesaid memorandum where it was clearly laid down that “all such government servants whose dates of birth have been revised to an earlier date consequent on the policy of the Government of the former Mysore State to review the dates of birth of all government servants as set out in Demi Official letter 12255-12325/CB. 121.50-98 dated March 20, 1950 and Official Memorandum 10612-50/R.P.S.21-51-6 dated November 4, 1952, should be granted extension of service equal to half the period of difference between the date of birth as originally indicated in the Government records and the revised date of birth..”. The course adopted by the Government in not allowing the appellant to continue in service for half of the period of difference between the date of birth as originally recorded in the service register and the revised date of birth has manifestly resulted in grave injustice to the appellant. This is, therefore, a pre-eminently fit case in which the High Court instead of dismissing in a summary manner the Writ Petition 1662 of 1971 which raised substantial questions of law and fact should have heard it on merits and enforced the directions contained in the aforesaid Memorandum dated August 14, 1958. As the impugned order which seems to have been passed by the High Court without the consideration which it merited has undoubtedly resulted in gross injustice, we allow the appeal in part and ⁴³²instead of remanding the case and asking the High Court to proceed with the writ petition and dispose it of after a regular hearing which is bound to involve undue delay, prolong the agony of the appellant and lay the parties under unnecessary additional monetary burden and thus tend to retard the course of justice, we direct the State Government to allow all the monetary benefits in terms of its aforesaid Memorandum dated August 14, 1958 which but for the order dated April 1, 1959 would have been available to the appellant. In the circumstances of the case, the appellant shall also be entitled to costs from the first respondent which we assess at Rs 1000”.

9. The next judgment on the subject matter is the one reported in (1981) 3 SCC 544 [**Sarjoo Prasad vs. General Manager and Anr.**], paragraphs 1 and 2 whereof are reproduced herein below:-

“Heard counsel for the parties. The short point in this appeal is whether it was open to the respondent to change or alter the birth-date of the appellant, being July 25, 1927, once accepted by the respondent in 1951,



without giving an opportunity to him to sustain the same. It is admitted that the alteration in the accepted birth-date of appellant has been made without giving an opportunity of hearing to the appellant. Appellant claimed that his date of birth is July 25, 1927, and this birth-date is entered in his High School Certificate and this birth-date was accepted by the respondent in 1951.

In *State of Orissa v. Dr (Miss) Binapani Dei*¹ this Court held that the date of birth without notice and without giving opportunity to the appellant cannot be altered to the disadvantage and prejudice of an employee because an administrative order which involves civil consequences must be made in conformity with the rules of natural justice which at its lowest minimum requires notice and opportunity to the person affected thereby. That admittedly having not been done, on this short ground, we allow this appeal and set aside the order retiring the appellant from service as well as the order correcting the birth-date.

2. The appellant under the orders of this Court continues to be in service and will continue to be in service. It will however be open to the respondent if it so desires and considers it necessary to hold the enquiry about the correct birth-date afresh after giving notice and opportunity of hearing and producing evidence on either side in this case.”

10. 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.**].

11. At this juncture, it may be pertinent to refer to a judgment of this Court rendered in the case of **Prabodh Raut v. The Bihar State Electricity Board & Ors.** reported in 2007(4) PLJR 52, wherein, in an identical situation as the present one, it has been held that in a case where the government department has forcibly put an employee before a Medical Board and got the age determined despite



the fact that there was no controversy as such, existing at that time or there was no discrepancy in the service book and has further sought to re-fix the date of birth of such employee on the basis of assessment made by the Board regarding the age, the date of birth of such employee, as recorded in the service book, cannot be substituted by the assessment made by the Medical Board and the same would be treated to be valid and legal date of birth.

12. From the aforesaid discussion, it is clear that the present case is squarely covered by the judgment of this Court rendered in the case of **Prabodh Raut V. Bihar State Electricity Board** (supra). It is further apparent from the law laid down by the Hon'ble Apex Court that once the date of birth has been accepted by the respondents at the time of opening of the service book, the same can neither be changed nor altered without giving an opportunity of hearing to the employee and on this short ground alone, the impugned order by which date of birth and date of retirement of the petitioner herein have been altered, is fit to be set aside.

13. It is also a trite law that there should be a reason for subjecting the employee to assessment of age by reference to the Medical Board, however, in the present case there is no material on record to show existence of sufficient reasons for constituting a Medical Board for assessment of the age of the petitioner and re-fixing his date of birth, as such on this ground as well the order re-



fixing the date of birth and the date of superannuation of the petitioner is liable to be quashed. The records would bear out that neither the petitioner was given an opportunity of hearing in compliance of principles of natural justice nor the respondents have shown any reason for constituting the Medical Board and subjecting the petitioner to fresh/ re-assessment of age, hence the Memo dated 2.2.2017 issued by the Circle Officer, Manjhi (Saran) whereby the petitioner has been informed that he has been superannuated w.e.f. 31.8.2016 as well as the letter contained in Memo No. 670 dated 31.7.2017 issued by the District Magistrate, Saran at Chapra are hereby quashed.

14. Before parting, it may be relevant to state that even Rule 96 of the Bihar Financial 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 a clerical error and that too upon the order of the State Government. In the present case, the date of birth was recorded as 30 years as on 24.8.1990 in the service book of the petitioner upon the same being certified by the Medical Officer, PHC, Daudpur and no doubt had ever been raised over the same nor there was any clerical mistake or tampering/ interpolation of the date of birth of the petitioner herein as recorded in the service book, hence there was no reason as to why the respondents tried to interfere with the same at the fag end of the service of the



petitioner herein.

15. The writ petition is allowed, however without any order as to cost.

16. It goes without saying that the petitioner would be entitled to all the consequential benefits as a result of quashing of the letter contained in Memo No. 43 dated 2.2.2017 issued by the Circle Officer, Manjhi (Saran) and the letter contained in Memo No. 670 dated 31.7.2017 issued under the signature of the District Magistrate, Saran at Chapra. It is further directed that the petitioner shall be made to retire based on his date of birth being 24.08.1960

(Mohit Kumar Shah, J)

BTiwary/-

AFR/NAFR	NAFR
CAV DATE	12.02.2018
Uploading Date	19-05-2018
Transmission Date	

