

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1158 of 2017

IN

Civil Writ Jurisdiction Case No. 1649 of 2009

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Bechan Thakur, Son of Late Pitambar Thakur, resident of Village-Sambhali, Police Station- Khirhar, District- Madhubani.

.... Appellant

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
5. General Manager-Cum-Chief Engineer, Koshi Electric Supply Area, Saharsa.
6. Personal Officer, Koshi Electric Supply, area Saharsa.
7. Electrical Superintending Engineer, Purnea Electrical Circle, Purnea.
8. Electrical Executive Engineer, Electric Supply Division, Purnea.
9. Electrical Executive Engineer, Koshi Hydel Division, Birpur, District- Saharsa.
10. Assistant Electrical Engineer, Electric Supply Sub-Division, Purnea.

.... Respondents

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Appearance :

For the Appellant : Ms. M. Chatterji, Advocate

For the Respondent-Board : Mr. Binod Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 10-10-2018

The claim of the appellant (original writ-petitioner) for being paid his salary for the period that he was out of service because of his superannuation on 31.10.2005 and his again being taken in service from 21.06.2008, as, according to him, he was wrongly made to retire, has been rejected by the learned Single Judge in C.W.J.C. No. 1649 of 2009 *vide* order dated 12.04.2017.

2. The aforesaid order passed by the learned Single Judge is under challenge in the present Letters Patent Appeal.

3. The appellant joined the services of Bihar State Electricity Board (*in short the "Board"*) and in the service book, his age was recorded as 22 years on 19.12.1970. However, later, based on a report of a team constituted by the Board, the date of birth of the appellant was changed from 19.12.1948 to 02.10.1945.

4. The appellant challenged the aforesaid shifting of the date of birth before this Court *vide* C.W.J.C. No. 3953 of 2005. During the pendency of the aforesaid writ petition,



the appellant superannuated on 31.10.2005. Thereafter, the writ petition referred to above was heard and a Bench of this Court *vide* order dated 15.05.2007, directed for resolving the dispute with regard to the date of birth of the appellant in a scientific manner by constituting a Medical Board. The order referred to above clearly stipulated that the lower age fixed by the Medical Board shall be taken into account for fixing the date of birth of the appellant (original writ-petitioner).

5. The Medical Board having assessed the age of the appellant to be between 59 years to 61 years, the date of birth of the appellant (original writ-petitioner) was shifted and he was reinstated in service from 21.06.2008.

6. It is for this period, *viz.*, 31.10.2005 to 21.06.2008 that the appellant claims the salary on the ground that he was not in service not because of any fault on his part, but of the Board in unnecessarily shifting back his age.

7. The aforesaid claim of the appellant was rejected on various grounds; one being that at the time of his re-induction in service, it was clearly stated by the Board that the appellant (original writ-petitioner) shall not be paid for the interregnum period on the principle of "no work no pay" and that secondly it was the appellant who had himself initially declared his age to be 22 years, which got reflected in his service book. In the absence of any relevant document, the



age of the appellant was, for the first time, stated in the service book as 22 years as on 19.12.1970. Later, an amendment was made in the year 1991 and the date of birth of the appellant was recorded as 19.12.1948. Again, another age was fixed by the Board at 02.10.1945, which too was changed later, as has been stated above.

8. The learned Single Judge was of the view that because of the appellant not having declared his correct age, there was some confusion regarding the same and, therefore, the Board could not be saddled with the charge of keeping the appellant out of service, thereby entitling the appellant for being paid the salary for such period during which he remained out of service and did not work.

9. It is not the case of the appellant either that the employer/Board, with *mala fides*, forced the ouster/superannuation of the appellant. In fact, the confusion had arisen because of the appellant not having categorically stated about his date of birth.

10. We, therefore, are in complete agreement with the view taken by the learned Single Judge that the appellant is not entitled to be paid salary for the period that he remained out of service. By denying the claim of the appellant, the learned Single Judge has not committed any error, warranting interference by this Court.



11. The present Letters Patent Appeal does not have merits and is, consequently, dismissed.

12. No order as to costs.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

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