

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.7 of 2019

In

Civil Writ Jurisdiction Case No.8983 of 2017

1. Kamleshwar Prasad Singh S/o Late Teni Singh R/o Vill.-Kasina,P.O.
Gohpur,P.S. Gorkha,Dist.-Chapra

... .. Appellant/s
Versus

1. The State of Bihar
2. The Director General of Police, Bihar.
3. The Inspector General of Police Muzaffarpur Division Muzaffarpur.
4. The Superintendent of Police, Muzaffarpur.
5. The Secretary, Bihar School Examination Board.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Rajesh Kumar, Advocate Mr. Ram Hriday Prasad, Advocate
For the State	:	Mr. P.K. Verma, AAG-3 Mr. Saroj Kumar Sharma, A.C. to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA



ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-04-2019

Heard learned counsel for the appellant and the State. The challenge raised is to the proceedings undertaken and ultimate retirement of the appellant treating his date of birth to be 17th of March, 1958 as recorded in the Service Book.

2. There is no dispute of the fact that the appellant came to be appointed as an Illiterate Constable in the Bihar Police Service on 3rd of July, 1979. The contention of the appellant is that he passed his High School thereafter and his date of birth actually is 17th of March, 1960, which stood recorded in the School Register Register as well as the High School Certificate and, therefore, the date of birth deserves to be corrected. This information of having passed High School was tendered to the department along with the certificate which records the date of birth as 17th March, 1960 and the petitioner also pursued the matter thereafter for correction of his date of birth in the service record. The respondents, instead of allowing the said correction, have erroneously treated the appellant to have retired from service as if his correct date of birth is 17th March, 1958. The petition was initially entertained by a learned Single Judge, and after admission an interim order was also



granted on 15th of March, 2018 to the effect that the appellant shall be allowed to continue in service as if his date of birth is 17th March, 1960. The matter came up for final hearing before another learned Single Judge on 4th of December, 2018 who delivered the impugned judgment recording that such a correction could not have been permitted, inasmuch as, a representation to the effect cannot be, according to the Bihar Police Manual, be entertained after 10 years of service. Reliance was also placed on a Supreme Court judgment to deny the said relief.

3. The contention raised by the learned counsel for the appellant is that this is an erroneous assumption of fact, inasmuch as, it was demonstrated before the learned Single Judge that the issue relating to correction of date of birth had been raised before the competent authority well within time and it was not beyond the period of 10 years and consequently, this rejection of the request of the appellant even later on which was brought on record through a supplementary affidavit was on an erroneous consideration by the police authorities. He, therefore, submits that the impugned judgment as well as the decision taken by the police authorities is invalid as the correction had been initiated within time and having not acted upon the same,



the respondents have committed an error which stands approved by the learned Single Judge and hence, the impugned judgment deserves to be set aside.

4. We have perused the entire records of the writ petition as well and we find that the Respondent Nos. 3 and 4 as well as Respondent No. 5 have separately filed counter affidavits. The counter affidavit filed by the Respondent Nos. 3 and 4 is categorical and we herein reproduce Paragraph Nos. 5 and 7 of the said counter affidavit:

“5. That with respect to the averment made in Para-2 of the instant writ petition it is submitted that the writ petitioner’s substantial question as mentioned in Para-2 of Sub-Para-II of the instant writ petition is wrong, because at the time of appointment the writ petitioner was seventh passed (Home Guard Trend) and the Date of Birth entered in the Service Book at the time of joining was recorded as 17.03.1958. The specific date was furnished by the writ petitioner to the then Superintendent of Police, Muzaffarpur himself and in confirmation of which the writ petitioner also signed on the service book (Annexure-B). It is not out of place to mention here that the specific date of Birth 17.03.1958 was entered in the candidate register on 03.07.1979 and in confirmation of which the



writ petitioner had given thumb impression and also signed on the candidate register. It will be evident from Annexure-A and B and then Brass No. 735 was allotted to the writ petitioner on 03.07.1979. Therefore the substantial of the writ petitioner that at the time of appointment his date of birth was 17.03.1960 and respondent authorities has violated the Article 14 and 16 of the constitution is wrong and concocted.

A True Photostats copy of candidate Register dated 03.07.1979 and Service Book (17.03.1958) is annexed herewith and marked as Annexure-A and B to this Counter Affidavit.

7. That with respect to the averment made in Para 4 and 5 of the instant writ petition it is submitted that it will be evident from Annexure A that the writ petitioner was appointed as illiterate constable on 03.07.1979. At the time of joining, specific date of birth 17.03.1958 was furnished to the then appointing authority by the writ petitioner himself and Home Guard Trained Certificate. The date of Birth 17.03.1958 was entered in the Candidate register and service book of the writ petitioner and for confirmation that his actual date of birth is 17.03.1958, the writ



petitioner voluntarily put his signature on the candidate register (Annexure-A) and Service Book (Annexure-B). It is also evident from Annexure-A that the writ petitioner voluntarily put his thumb impression on the candidate register on the date of joining in Bihar Police on 03.07.1979 for confirmation of date of birth. It is evident from candidates register that at the time of joining the writ petitioner was trained Home Guard i.e. the writ petitioner had joined Home Guard as per date of birth 17.03.1958. The respondent No. 3 and 4 have meticulously perused the candidate register and service book of the writ petitioner and found that the writ petitioner had not made a request for correction of date of birth in the service book and candidate register on 03.07.1979.”

5. Apart from this, we would refer to the copy of the Candidate Register, which has been made the basis of the aforesaid averments in the counter affidavit as also the Service Book record. It is pertinent to mention that for reasons best known, the appellant-petitioner did not choose to controvert or contradict the aforesaid facts that were stated in the counter affidavit. The date of birth and qualification column in the Candidate Register categorically records the date of birth as 17th



of March, 1958 as well as the appellant having passed VIIth Class and a Trained Home Guard. This entry in the Candidate Register resulted in the issuance of Constabulary Number known as Brass No. 735 which was accepted by the appellant who entered the service on the basis of such declaration. The Service Book accordingly records the date of birth as 17th March, 1958. The averments contained in the counter affidavit quoted hereinabove having been untraversed or not contradicted by the petitioner, and no contrary material having been brought on record, there is no scope for any assumption that the date of entry in the Service Book made by the authorities was wrong. It was on the basis of the information tendered by the candidate himself at the time of his appointment having passed his VIIth Class and date of birth as disclosed appears to have been recorded as 17th March, 1958. In the absence of any material to contradict the aforesaid averments as well as the records appended along with the counter affidavit, the subsequent passing of the High School Examination and the mentioning of a new date of birth does not give any right to the petitioner to claim any such correction.

6. We, even otherwise, therefore, do not find any merit in the claim of the appellant.



7. The appeal accordingly stands rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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CAV DATE	
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