

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22680 of 2013

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Ram Keshwar Das, Son of Sri Ram Dhani Das, resident of Jamari, Police Station- Bodh Gaya, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Maha Samadesta, Bihar Home Guard Mukhayalaya, Patna.
3. The Up-Maha Samadesta, Bihar Home Guard Mukhayalaya, Patna.
4. The Samadesta, Bihar Home Guard Mukhayalaya, Patna.
5. The District Samadesta, Bihar Home Guard Jahanabad.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar Tiwary, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, G.A.-7
		Mr. Gopal Krishna, A.C. to G.A.-7.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 17-05-2019

Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is challenging the action of the respondents, by which the petitioner has been made to superannuate with effect from 28.02.2013 treating his date of birth as 18.02.1953.

Grievance has been made by the petitioner that it is a premature superannuation as in the service book his date of birth has been recorded as 12.06.1963 and that cannot be in any manner said to have been tampered or interpolated, but in the



right hand side of the service book, another date of birth i.e. 18.02.1953 has been recorded by the Commandant. The ground for his premature superannuation is that while getting enrollment in the Home Guard the petitioner has declared his age as 19 years, later on, the petitioner has been selected in the Bihar Police Services and his service book was opened, accordingly, the date of birth has been recorded there.

Learned counsel for the petitioner has challenged the statement about his declaration made at the time of enrollment in the Home Guard.

As in the counter affidavit, the declaration which the petitioner has made at the time of enrollment in the Home Guard has not been produced on record for corroborating the stand about the declaration made by the petitioner, this Court vide order dated 09.04.2019 directed the respondent authorities to produce the declaration of the petitioner made at the time of his enrollment in the Home Guard. The case was again listed on 30.04.2019, on that day, at the request of learned counsel for the State the case was adjourned for two weeks. Today, learned counsel for the State has come forward and stated that as per the instructions the records of the Home Guard is not traceable.

Though the records have not been brought by the



State to show the declaration of the petitioner made by the petitioner at the time of his enrollment in the Home Guard, but learned counsel for the State has brought on record the Bihar Home Guard Rules, 1953. Rule- 4(a) of the said Rules stipulates as follows:-

“4(a) Who is not less than 19 years and not more than 40 years of age on the 1st day of January of the year in which the application for enrollment is made.”

So, Rule- 4(a), itself makes it clear that no person can be enrolled as Home Guard below 19 years of the age. As per the petitioner, his date of birth has wrongly been changed from 12.06.1963 to 18.02.1953 and further submits that the declaration of the petitioner has not been brought on record by the State, but the question would arise that if 12.06.1963 is to be taken as correct date of birth of the petitioner, in such circumstance, the petitioner was about 9 years of age at the time of his enrollment in the Home Guard, which is not statutorily permissible for enrolling any person in the Home Guard, but if 18.02.1953 is to be taken his date of birth, then certainly the petitioner became 19 years of age at the time of his enrollment in the Home Guard. So if the calculation is made, the corresponding date of birth would be 18.02.1953, is compatible



with the situation and as such, 18.02.1953 appears to be correct date of birth as per Rule 4(a) of the Bihar Home Guard Rule, 1953, which specifically stipulates that person should be 19 years of age at the time of enrollment in the Home Guard. Though the State failed to bring on record the declaration of the petitioner and missing out of the fundamental link of change made subsequently, but on account of provision of the Bihar Home Guard Rules, 1953 this Court would not like to interfere with the action of the respondent in changing the date of birth of the petitioner from 12.06.1963 to 18.02.1953 as it is compatible to the year in which the petitioner could have been enrolled in the Home Guard.

In such view of the matter, this Court does find any merit in this writ petition, accordingly, the same is dismissed.

(Shivaji Pandey, J)

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