

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.532 of 2018

In

Civil Writ Jurisdiction Case No.16568 of 2013

=====

Baban Ray S/o Shri Bharat Ray Resident of Chota Telpa, P.S. Chapra Town,
District- Saran.

... .. Appellant/s

Versus

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

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Harsh Singh

For the Respondent/s : Mr.Prabhat Kumar Verma (AAG 3)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-07-2019

The appellant, a home-guard, is aggrieved by the alteration of his date of birth on being retired on the ground that his date of birth could not have been altered after 17 years of his service and for which there is no factual foundation. The contention, therefore, is that the action taken is contrary to law including the provisions of the Pension Rules as also the service conditions governing the services of Home-Guards.

The background in which the writ petition came to be filed in the year 2013 is that the date of birth which was recorded in the service book i.e. 5.10.1959, was altered to 7th of January,



1955 on 11th of September, 1998. It is undisputed that the appellant had been called upon to submit an explanation in this regard to which a reply was given by the appellant whereafter the date of birth was altered.

The first contention on behalf of the appellant by the learned counsel is that this alteration was carried out without tendering any information of the order having been passed in this regard. In effect, the contention is that the appellant had no knowledge nor was he served with any order informing him about the change being brought about. Learned counsel for the appellant contends that the appellant was under an impression as if no such action had been taken, but he came to know about the same in the year 2013 when such other similar cases of other alterations gained rumour. It may be mentioned that the order of alteration of some other constables is dated 11th of September, 1998 which contains a recital that the information of this alteration be given to the appellant.

The second ground of challenge as a collateral argument to the same is that in spite of a specific direction for giving information to the appellant, there is nothing on record to indicate that such information was actually tendered to the appellant or copy of the order was served on him.



The third ground of challenge is that the learned Single Judge has committed an error by recording a conclusion upholding the view of the authorities while assessing the age of the appellant as 16 years at the time he was sent on training. The appellant alleges that he went on training in 1976 for which no supportive document has been filed whereas the respondents allege that he was sent on training in 1975. Reliance in support of this challenge has been placed on a Division Bench judgement of this Court in the case of **Awadh Narain Singh Vs. The State of Bihar & Ors., reported in 2002 (1) P.L.J.R. (HC) 567**. It would be relevant to mention at this stage that if the school leaving certificate, which was obtained by the appellant in the year 2013 and has been relied on as defence, is accepted, then according to the age reflected therein he was not 20 years of age at the time when he was inducted for training and according to the same he would be only 16 years old. The fourth argument is on the issue of laches while drawing support from the decision in the case of **The Moon Mills Ltd. Vs. M.R. Meher, President, Industrial Court, Bombay & Ors., reported in AIR 1967 S.C. 1450**. It is urged that the learned Single Judge is not right in invoking the principles of laches for dismissing the writ petition.

The last argument is that there is no basis for recording the date of birth as 7th of January, 1955 even accepting the



calculation of age as made on the basis of school leaving certificate which could be taken back only to 1957.

Having considered the submissions raised and before entering into the merits of the other arguments, it would be relevant to point out that on the basis of unclarity regarding the exact date of birth or year of birth of the appellant, an assessment was made and an order was passed in 1998 itself correcting the date of birth as recorded in the service book. It is undisputed that this was done in 1998 after the appellant had put in 17 years of service.

However, the appellant claims that he had no knowledge about the order passed or any intimation of such a decision. It is here that we find that the appellant has nowhere pleaded in the entire writ petition or in this appeal as to why he kept mum and chose not to make any enquiry about the same when, admittedly, the proceedings of correction had been undertaken after putting him to notice and after the submission of his explanation. This complete absence of explanation on the part of the appellant and the excuse set up of no proof of information being tendered to him cannot ipso facto lead to the presumption that the appellant got knowledge about this alteration only in the year 2013. This is further fortified by the fact that the appellant has nowhere pleaded in his writ petition or in the appeal as to what was the source of his



information about this alteration in the year 2013 except for a bald statement of rumour. If his excuse of having no knowledge is accepted, then the same would continue till his age of superannuation which fell later on and, therefore, the appellant was under an obligation to plead before this Court positively with supporting evidence as to how he came to know about the said alteration. The appellant having failed to do so, he is clearly responsible for further laches of 15 years in having filed the writ petition against the order of 1998 in the year 2013.

In this background, the plea set up that the respondents had not submitted any proof of tendering of the information to the appellant should be read in his favour is unacceptable. In the said background, the conclusion drawn by the learned Single Judge on laches cannot be faulted with.

Coming to the issue of the doubt about his age, it is evident that the appellant alleges to have gone for training in 1976, but no supporting evidence has been filed to support the same. To the contrary, the appellant filed a School Leaving Certificate which has been discussed in the judgement of the learned Single Judge and was on record which was obtained in the year 2013 and, according to the said certificate, the age of the appellant would be 16 years and not 20 years which is reflected in the document relating to training of the year 1975. Thus, the



claim of the appellant as also that of the department are both clearly indicative of the fact that the age depicted in the documents at the time of training was not based on any cogent evidence and was, therefore, speculative that reflects manipulation. This sort of attempted manipulation, therefore, cannot be read in favour of the appellant to extend any benefit to him.

There is an attractive argument on behalf of the appellant in this regard, namely that even accepting that in 1975 he was 16 years of age, his date of birth could not be pushed back beyond 1957 and there is no basis to calculate the date of birth as 7th January, 1955. We may point out that in respect of the legal position to establish the correct date of birth as asserted, the onus is on the person who makes the assertion. In the instant case, the date of birth was corrected in 1998 but it is the petitioner who asserts that his correct date of birth cannot be pushed back beyond 1957. The petitioner has not been able to do so in view of the law laid down by the Privy Council in the case of Robins Vs. National Trust Company, 1927 Appeal Cases 515 1927 equal to AIIIE Reports 73 where the Privy Council ruled as under:-

“.....To assert that a man who is alive was born requires no proof. The onus is not on the person making the assertion, because it is self-evident that he



had been born. But to assert that he [had been] born on a certain date, if the date is material, requires proof; the onus is on the person making the assertion”

The appellant has failed to discharge this burden.

The appeal, therefore, fails and is hereby dismissed.

It is here that we find a scope of an inquiry that could have been undertaken by the respondents, but in the wake of the manner in which the date of birth of the appellant was incorrectly recorded at the initial stage itself and further that the writ petition was filed after 15 years of the correction made in the service book, we do not find this to be a fit case to re-open the issue in the discretionary exercise of writ jurisdiction keeping in view the aforesaid disputed facts that have been noticed by us hereinabove.

The appeal, therefore, fails and is, hereby, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	02.07.2019
Transmission Date	N.A.

