

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.616 of 2018

In
Civil Writ Jurisdiction Case No.939 of 2006

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1. Ganeshi Mahto
 2. Shiv Shankar Mahto
- Both sons of Late Soman Mahto, resident of Village Matlupur, Police Station - Piyar, District Muzaffarpur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Collector cum District Magistrate, Muzaffarpur.
3. The Superintendent of Police, Muzaffarpur.
4. The Deputy Collector, District General Administration Section, Collectorate, Muzaffarpur.
5. The Deputy Collector, Land Reforms, West Sub Division, Muzaffarpur.
6. The Sub Divisional Officer, East Sub Division, Muzaffarpur.
7. The Circle Officer, Bandra Block, District Muzaffarpur.
8. The Officer-in-Charge, Police Station Pear, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ashok Kumar Choudhary, Advocate
For the Respondent/s	:	Mr.Prabhat Kumar Verma, AAG-3
		Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-01-2019

Heard learned counsel for the appellants and

Shri P. K. Verma, learned A.A.G. for the State of Bihar.

2. The dispute was about the age of superannuation of the employee. He was made to retire treating his age to be 65 years as on 31st of March, 2005. This was challenged by the employee in C.W.J.C. No.939 of 2006



giving rise to this appeal and during the pendency of the writ petition, he died. He has been substituted by his heirs who continued the writ petition and have filed this appeal.

3. The employee was appointed as a Chowkidar and he was made to retire on account of a complaint made by a private person, that in a proceeding under Section 144 Cr.P.C., the employee had disclosed his age, which clearly indicated that he had attained the age of 65 years as on 31st March, 2005. It is on this ground that a Medical Board was set up to determine the age of the employee. The Medical Board, however, corroborated the date of birth as recorded in the service record, i.e. 4th of July, 1947.

4. It appears that the Department being not satisfied proceeded to appoint a second Medical Board which the appellants allege was not in accordance with the provisions of Rule 442 of the Bihar Health Manual as there was no special circumstances for constituting a second Medical Board. Even otherwise, it was contested by the appellants that the date mentioned in the service book was the correct date and which stood corroborated by the report of the Medical Board which was held on 27th March, 2003. In



such circumstances, the question arose before the learned single Judge as to whether the employee had been forcefully made to retire in spite of his willingness to continue to work.

5. The learned single Judge after having gone through the pleadings came to the conclusion that the employee had been made to forcefully retire which was unjust and recorded a clear finding to that effect that the date of birth of the employee as recorded in the service book is 4th of July, 1947.

6. However, since the employee had expired by then, the Court proceeded to award only 25% of the wages for the period he had been denied salary.

7. It is this part of the judgment which has been assailed before us by the appellants who are the heirs of the deceased employee.

8. On 21st January, 2019, we had passed the order calling upon the learned counsel for the State to assist the Court as to why the award of 25% salary had been made when the Court itself had found that the correct date of birth of the deceased employee was 4th of July, 1947.



9. Shri P. K. Verma, learned A.A.G. contends that the learned single Judge on a conspectus of the overall circumstances of the case exercised his discretion sympathetically towards the appellants for awarding only 25% salary for the period which now remains to be considered, i.e. between March, 2005 and July, 2007.

10. It has further been contended on behalf of the State that the discretion exercised by the learned single Judge should not be interfered with in the background that the deceased employee had not discharged his duties at all after he had been made to retire. It is also contended that if the second Medical Board had given an opinion, the same should have been respected as it is an expert opinion and would be in supersession of the earlier opinion given by the Medical Board itself. It is therefore submitted that the award of 25% of wages may be maintained but no further enhancement is required.

11. We have considered the submissions raised and we find it necessary to mention at the very outset that this is an appeal by the employee and not by the State of Bihar contesting the findings recorded by the learned single Judge.



The fact that the date of birth of the deceased employee is 4th July, 1947 has been found to be correct by the learned single Judge and which finding has not been assailed by the State of Bihar. It is, therefore, not open to the respondents to contest the said position which has become final between the parties.

12. The next contention is about the discretion exercised by the learned single Judge in awarding only 25% of the salary. The learned single Judge has not set out any proposition of law so as to gather the parameters under which only 25% salary could have been awarded. The ordinary and usual accepted mode of calculating back wages upon a finding recorded in the nature as involved herein is to award at least 50% back wages. The question of the deceased employee having been forcefully retired from service is clearly established and which finding has not been challenged by the State of Bihar. In the given circumstances of the case, therefore, we do not find any justification for accepting the parameter of 25% of the wages which ought to have been at least half of the wages earned by the deceased employee for the period during which he had been forcefully compelled not to discharge his duties.



13. Accordingly, we allow the appeal to the extent as observed above and award 50% of the back wages to the appellants who are the legal heirs of the deceased employee and direct the respondents to calculate the same in respect of the period keeping in view the date of birth of the employee as 4th of July, 1947. The calculation shall be carried out awarding 50% of the back wages to the deceased employee from the date he was made to forcefully retire till the date of his superannuation as per the date of birth referred to herein above, i.e. 4th July, 1947. The calculations and the consequential payment to the appellants shall be made within a period of three months from today.

14. The appeal is accordingly allowed to the aforesaid extent.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Saif

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