

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16701 of 2019

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1. The Union of India through the General Manager, EC Railway, Hajipur, Dist- Vaishali (Bihar) Pin- 844101.
 2. The Divisional Railway Manager, Samastipur Division, EC Railway, Samastipur- 848101.
 3. The Divisional Railway Manager (Personnel), Samastipur Division, EC Railway, Samastipur- 848101.
 4. The Divisional Railway Manager (Engineering), Samastipur Division, EC Railway, Samastipur- 848101.
 5. The Senior Section Engineer (Rail Path), Bapudham Motihari at and PO- Motihari, Dist- East Champaran, Pin- 845401.

... .. Petitioner/s

Versus

Shri Punit, Son of Shri Late Baldeo Ex- Sr. Trackman under Sr.SE/P.Way/Bapudham Motihari Bapudham, Motihari, Dist- East Champaran, at present residing at Village- Ratnpur, P.O.- Pipra Kothi, Dist- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. Anand Kumar, Advocate
Mr. Bipin Kumar @ Das, Advocate
For the Respondent/s : Mr. Arbind Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR



ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-10-2019

Heard learned counsel for the parties. It is an old adage that law is good but justice is better.

2. The appellant-Union of India has questioned the correctness of the impugned judgment of the Tribunal dated 21st February, 2019 in OA/050/00211/2018, whereby the claim of the respondent-applicant challenging the recovery proceedings initiated against him on the ground of an incorrect date of birth has been allowed and the respondent-applicant has been treated to have been retired from the date he was told not to come to work together with all consequential pecuniary benefits.

3. The case of the appellants squarely is to the effect that the respondent-applicant himself was aware of the date of birth recorded in the Service Book as well as in the Medical Certificate and, therefore, any denial by him to that effect is contrary to record. In the wake of the aforesaid position of the correct recording of date of birth, the date of retirement of the respondent-applicant cannot travel beyond 60 years after 21st of December, 1953.

4. Learned counsel for the respondent-applicant,



however, submits that no mistake or fault of whatever kind be attributed on the respondent-applicant, inasmuch as, it was the appellants who took work from the applicant and allowed him to continue for which period he is entitled to his salary.

5. We have considered the rival submissions and the argument on behalf of the appellants that the date of birth is correctly recorded in the Service Book appears to be correct. There is a dispute relating to the knowledge of the said date of birth being recorded as the respondent-applicant claims that he is a thumb impressionist and not literate enough to know about the same, but at the same time what we find is that he had been allowed to continue by the appellants themselves. It is also admitted by the learned counsel for the appellants that appropriate action had been taken against the concerned employee who had allowed the respondent-applicant to continue in work even beyond 60 years. It is therefore clear that if any mistake was committed by the employee of the appellant-Union in allowing the respondent-applicant to continue, there cannot be a direct attribution of any default on the part of the respondent-applicant who was a mere Trackman and was performing his duties and receiving salary.

6. We are, therefore, unable to apply the law as relied



on by the learned counsel for the appellants in the case of **Radha Kishun Vs. Union of India & Ors**, reported in (1997) 9 SCC 239 and would rather apply the law laid down in the case of **State of Punjab Vs. Rafique Masih**, reported in (2015) 4 SCC 334 whereunder the Apex Court has ruled that no such recovery can be made unless the fault is squarely attributed to the employee. We are convinced on the facts of the present case that the respondent-applicant cannot be held at fault in the given circumstances and, therefore, the recovery of salary could not have been made. To that extent we uphold the order of the Tribunal.

7. Now coming to the issue of the correct recording of date of birth, as already observed above, the Service Book and the Medical Certificate leave no room for doubt that the same was entered in digits as well as in words and, therefore, the same cannot be doubted or be treated to be manipulated or in any way a wrong recording of date of birth. Consequently, the applicant's date of retirement would be calculated treating his date of birth as 21st of December, 1953 and the impugned judgment of the Tribunal would stand modified to the said extent by extending him consequential benefits only treating his period of service that would end upon such calculation i.e. 31st



of December, 2013. The impugned judgment, therefore, stands modified accordingly and the writ petition is partly allowed subject to above.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.10.2019
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