

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1143 of 2018

In
Civil Writ Jurisdiction Case No.11412 of 2017

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1. The Registrar General, Patna High Court, Patna and Ors
 2. The Registrar Administration, Patna High Court, Patna.
 3. The Registrar Establishment, Patna High Court, Patna.
 4. The Joint Registrar, Judicial, Patna High Court, Patna.

... .. Appellant/s

Versus

1. Kapil Deo Roy, Son of Late Dular Roy Resident of village - Keshopura, PS - Janakpur Road, District - Sitamarhi.
2. Islok, Son of Late Laxman Ram, Resident of Village - Golakpur, PS - Ghoshi, District - Jehanabad.
3. Narayan Prasad, Son of Sri Yamuna Prasad, Resident of village and PO Nadaul, PS - Masaurhi, District - Patna.
4. The State of Bihar.
5. The Principal Secretary cum Law Remembrance, Law Department, Govt. of Bihar, Patna.
6. The Accountant General, Bihar, R-Block, Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 1144 of 2018
In
Civil Writ Jurisdiction Case No.7755 of 2017

1. The Registrar General, Patna High Court, Patna and Ors
2. The Registrar Administration, Patna High Court, Patna.
3. The Registrar Establishment, Patna High Court, Patna.
4. The Joint Registrar, Judicial, Patna High Court, Patna.

... .. Appellant/s

Versus

1. Nand Kishore Prasad, Son of Late Raghunandan Prasad, Resident of Village- Sumer Bala Bigha, P.O.- Malathi, P.S.- Makhadumpur, District- Jehanabad.
2. The State of Bihar.



3. The Principal Secretary cum Law Remembrancer, Law Department, Govt. of Bihar, Patna.
4. The Accountant General, Bihar, R- Block, Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1143 of 2018)

For the Appellant/s : Mr. Piyush Lall, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, G.A. 7
Mr. Sushil Kumar Singh, A.C. to G.A. 7
For Accountant General : Mr. Raghwanand, Advocate

(In Letters Patent Appeal No. 1144 of 2018)

For the Appellant/s : Mr. Piyush Lall, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, G.A. 7
Mr. Bajrangi Lal, Advocate
Mr. A.K. Ghose, Advocate
For Accountant General : Mr. Chaitanya Swaroop, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
C.A.V. JUDGMENT**

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-05-2019

The question raised in these appeals is can the High Court limit the rights of the respondent-petitioners to hold their posts to stated number of years on the premise, that if 60 years is the age of retirement then they cannot be continued for more than 44 years in service, as reducing 44 years from the maximum age of 60 would count as 16 years of age at the time of inception in service. The administrative exercise undertaken by the High Court that was undertaken in these peculiar circumstances have been narrated in the impugned judgement,



but for a better appreciation, we may lay the background in which the validity of the impugned judgement is to be tested.

2. These two appeals arise out of two writ petitions being C.W.J.C. Nos.7755 of 2017 and 11412 of 2017 involving three petitioners in L.P.A. No.1143 of 2018 and one petitioner in L.P.A. No.1144 of 2018, yet the decision would affect some other similarly situate Class IV employees, as, at the time when the assessment was made, it affected 13 persons. A couple of them have chosen not to challenge the decision of the High Court, but there are other writ petitions which have been filed in which orders have been passed and contempt matters have also been instituted. The employees who were supposed to retire in 2017 and in 2018 and were put to notice about their retirement are 13 in number as per the chart indicated below:-

1. Sri Nand Kishore Prasad (L.P.A. No.1144/18)
2. Sri Suresh Mahto (CWJC No.9183/18)
(MJC No.4659/18)
3. Sri Panchu Ram (CWJC No.21274)
4. Sri Raj Kumar
5. Sri Yogendra Ram
6. Sri Prabhu Shankar Panday](CWJC No.9183/18
7. Sri Mahendra Prasad] (MJC No.4659/18)
8. Sri Wasi Ahmad
9. Sri Kapil Deo Roy] (LPA No.1143/18)
10. Sri Ishlok]



11. Sri Pramod Bihari
12. Sri Narayan Prasad (LPA No.1143/18)
13. Sri Ram Babu Ram (CWJC No.14753/18)

3. We had called upon the High Court to file an appropriate affidavit disclosing the status of the litigation in respect of these persons, including the respondent petitioners. The order passed by us on 2nd of April, 2019 is quoted hereinbelow:-

“From the records of the writ petition, we find a chart appended at page 7 of the paper book that is a list of such Class IV employees who had joined the service in this High Court till 24th of July, 1998 and were proposed to be retired on the completion of 44 years of service in 2017 and 2018 respectively.

The present appeal has been preferred questioning the correctness of the impugned judgement of the learned Single Judge and we find that the present appeal is in respect of 3 of such employees and in the connected appeal, L.P.A. No.1144 of 2018, there is one person. Out of 13, 4 are before us.

We are not aware as to how and in what manner have the others been continued or allowed to continue either under a judicial order or under any administrative order of this Court. The said details be brought before us by way of an appropriate affidavit and also disclosing any litigation before this Court pending as on date in relation to these employments.

The Registrar General shall file his affidavit in this matter before this Court by Friday i.e. 5th of April, 2019.

Put up on 5th of April, 2019.”



4. In pursuance thereof, the affidavit of the Registrar General has been filed which contains the following averments:-

“3. That this supplementary affidavit is being filed in compliance of the order dated 2.4.2019 passed by the Hon’ble Court in the present appeal whereby the Hon’ble Court was pleased to direct that details be brought before it by way of appropriate affidavit as to how and in what manner nine out of a total of thirteen Class IV employees, as per the chart appended at page No. 27 of C.W.J.C. No. 11412 of 2017, who were proposed to be retired on completion of 44 years of service in the years 2017 and 2018 have been continued or allowed to continue either under judicial order or any any other administrative order of the Hon’ble Court and also to disclose any litigation before the Hon’ble Court pending as on date in relation to these employees.

4. That the employee, Nand Kishore Prasad, (at Sl. No. 1 of the above chart) on being retired on 31.03.2017 vide memo No. 22145 dated 31.3.2017, had filed C.W.J.C. No. 7755 of 2017 also challenging the same. The Hon’ble Court by judgement dated 29.1.2018 was pleased to allow the said writ petition. The Hon’ble Court on its Administrative Side (in short the Court), in compliance thereof by office order No. 8(I) dated 21.03.2018, allowed him to join his duty and being aggrieved has filed the connected appeal being L.P.A. No. 1144 of 2018. Copy of Memo No. 22145 dated 31.03.2017 and Office order No. 8(I) dated 21.03.2018 are annexed as Annexure-1&2.



5. That the employee, Suresh Mahto (at Sl.No. 2 of the above chart) on being retired on 30.04.2017 vide memo No. 29066 dated 28.4.2017 challenged the same by filing C.W.J.C. No. 9183 of 2018, Suresh Mahto and ors. Vs. The State of Bihar and Ors. He also challenged memo No. 24210-20 of Class IV employees who have been retired from service on completion of 44 years of service in the year 2017 and 2018. The Hon'ble Court by order dated 4.10.2018 was pleased to dispose of the same directing that the competent authority examine the case and if it is found that the facts, law and relief are identical to the case of petitioners of C.W.J.C. 11412 of 2017 (filed by Kapil Deo Roy and Ors.) then the same benefits have been given to the petitioners of C.W.J.C. No. 11412 of 2017 be also extended to him. In light thereof he filed representation for reinstatement. It was considered and since L.P.A. Nos. 1143 of 2018 and 1144 of 2018 had been filed against judgment dated 29.1.2018 passed in C.W.J.C. No. 11412 of 2017 and C.W.J.C. No. 7755 of 2017 respectively his prayer was directed to be kept in abeyance till outcome of these appeals under orders dated 4.11.2018 of the Court and this decision was communicated to him vide letter No. 82528 dated 06.11.2018 of the Court. Thereafter he filed M.J.C. No. 4659 of 2018 alleging non compliance of order dated 4.10.2018 passed in his said writ petition. A show cause has been filed by the Court submitting that the said allegation is not correct on the grounds as submitted therein. The contempt petition is pending consideration of the Hon'ble Court for a reasoned order to be passed by the Court as per order dated 30.01.2019 passed by Hon'ble Court. Copy of Memo No. 29066 dated 28.04.2017, Court's order



dated 04.10.2018 passed in C.W.J.C. No. 9183/2018 and copies of relevant orders passed in M.J.C. 4659/2018 are annexed as Annexures-3, 4 & 5 respectively.

6. That the employee, Panchu Ram (at Sl.No. 3 of the above chart) on being retired on 30.06.2017 vide memo No. 41476 dated 29.6.2017 has filed C.W.J.C. No. 21274 of 2018 also challenging the same. At present the writ petition is pending consideration of the Hon'ble Court and no orders have been passed therein. Copy of Memo No. 41476 dated 29.6.2017 is annexed as Annexures-6.

7. That the employee, Raj Kumar (at Sl.No. 4 of the above chart) on being retired on 31.07.2017 vide memo No. 51377 dated 29.7.2017 submitted representation for reinstatement in service which was ordered to be kept in abeyance on orders of the Court dated 19.3.2018. He has not filed any writ petition challenging his retirement. Pensionary benefits i.e. G.P.F., G.I.S. and leave encashment have been paid to him and pension and gratuity have been sanctioned in his favour by the Accountant General. Copy of Memo No. 51377 dated 29.7.2017 is annexed as Annexures-7.

8. That the employee, Yogendra Ram (at Sl. No. 5 of the above chart) was retired on 31.7.2017 vide memo No. 51345 dated 29.7.2017. He has not filed any writ petition challenging his retirement. He has died on 04.01.2018. Pensionary benefits i.e. G.P.F. and G.I.S. have been paid to him and pension and gratuity have been sanctioned in favour of his wife by the Accountant General. Copy of Memo No. 51345 dated 29.7.2017 is annexed at Annexures-8.

9. That the employees, Prabhu



Shankar Pandey and Mahendra Prasad (at Sl. No. 6 and 7 of the above chart) were retired on 31.8.2017 and 31.10.2017 vide memo Nos. 60785 dated 30.8.2017 and 74045 dated 31.10.2017. They challenged their retirement in C.W.J.C. No. 9183 of 2018 along with Suresh Mahto (at Sl. No. 2 of the above chart). They also challenged memo No. 24210-20 dated 07.4.2017 issued by the Registrar (Establishment) containing the chart of Class IV employees who have been retired from service on completion of 44 years of service in the years 2017 and 2018. The Hon'ble Court by order dated 4.10.2018 was pleased to dispose of the same with the directions as stated above. Along with Suresh Mahto, they have filed M.J.C. No. 4659 of 2018 alleging non compliance of orders dated 4.10.2018 passed in the said writ petition after their prayer for reinstatement was directed to be kept in abeyance as above. A show cause has been filed by the Court submitting that the said allegation is not correct on the grounds as submitted therein and the contempt petition is pending consideration of the Hon'ble Court, as above. Copy of Memo Nos. 60785 dated 30.08.2017 and 74045 dated 31.10.2017 are annexed as Annexures-9 & 10.

10. That the employee, Wasi Ahmad (at Sl. No. 8 of the above chart) on being retired on 31.1.2018 vide memo no. 7920 dated 31.1.2018 submitted representation (along with Raj Kumar at Sl. No. 4 above) for reinstatement in service which was ordered to be kept in abeyance on orders of the Court dated 19.3.2018. He has not filed any writ petition challenging his retirement. Pensionary benefits i.e. G.P.F., G.I.S. and leave encashment have been paid to him and pension and gratuity have been sanctioned in



his favour by the Accountant General. Copy of Memo No. 7920 dated 31.1.2018 is annexed as Annexures-11.

11. That the employees, Kapil Deo Roy, Ishlok and Narayan Prasad (at Sl. Nos. 9, 10 and 12 of the above chart), on being directed that they would retire on 31.1.2018, 30.4.2018 and 30.4.2018 vide letter bearing Memo No. 24210-20 dated 7.4.2017 of the Court, had filed C.W.J.C. No. 11412 of 2017 also challenging the same. The Hon'ble Court by judgement dated 29.1.2018 was pleased to allow the said writ petition. The Hon'ble Court on its Administrative Side (in short the Court) in compliance thereof by memo allowed them to continue in service and being aggrieved has filed the present appeal being L.P.A. No. 1143 of 2018. Copy of Memo No.s 8132 dated 31.1.2018, 33454 dated 30.4.2018 and 33438 dated 30.4.2018 are annexed as Annexures-12, 13 & 14 respectively.

12. That the employee, Pramod Bihari (at Sl. No. 11 of the above chart) was retired on 30.4.2018 vide memo No. 33115 dated 28.4.2018. He has not filed any writ petition challenging his retirement. Pensionary benefits i.e., G.I.S. and leave encashment have been paid to him and pension and gratuity have been sanctioned in his favour by the Accountant General. Copy of Memo No. 33115 dated 28.4.2018 is annexed as Annexures-15.

13. That the employee, Ram Babu Ram (at Sl. No. 13 of the above chart) on being directed to be retired on 30.9.2018 vide letter bearing memo No. 24210-20 dated 7.4.2017 of the Court challenged the same in C.W.J.C.No. 14753 of 2018 (filed on 26.7.2018). The Hon'ble Court by order dated 26.9.2018 was pleased to direct that the writ



petition be put up after disposal of L.P.A. Nos. 1143 of 2018 and 1144 of 2018 (i.e. the present two appeals) and further that the impugned letter dated 7.4.2017 be kept in abeyance but would be subject to the final outcome of these two appeals. In compliance of the said order of the Hon'ble Court his retirement process was kept in abeyance (due on 30.9.2018) till final result of L.P.A. Nos. 1143 of 2018 and 1144 of 2018 vide memo No. 73682 dated 29.9.2018 of the Court. Copy of order dated 26.9.2018 passed by Hon'ble Court in C.W.J.C.No. 14753/2018 and copy of Memo No. 73682 dated 29.9.2018 are annexed as Annexures-16 & 17.

14. That on the basis of facts and circumstances stated above it is humbly submitted that out of the nine remaining employees whose names are contained in the chart appended at page No. 27 of C.W.J.C.No. 11412 of 2017 one employee, Ram Babu Ram (at Sl. No. 13 thereof with date of retirement on 30.9.2018) has been continued in service thereafter in compliance of order dated 26.9.2018 passed in C.W.J.C. No. 14753 of 2018 and the other eight employees are not continuing in service after their respective dates of retirement as mentioned in the said chart. The writ petition of Ram Babu Ram i.e. C.W.J.C.No. 14753 of 2018 has been directed to be put up after disposal of L.P.A. Nos. 1143 of 2018 and 1144 of 2018. Another employee Panchu Ram (at Sl.No. 3 thereof with date of retirement on 30.6.2017) has filed C.W.J.C.No. 21274 of 2018 which is pending consideration of the Hon'ble Court. Another three employees, Suresh Mahto, Prabhu Shankar Pandey and Mahendra Prasad (at Sl. Nos. 2, 6 and 7 thereof with dates of retirement on 30.4.2017, 31.8.2017 and 31.10.2017 respectively)



have filed M.J.C. No. 4659 of 2018 alleging non compliance of order dated 4.10.2018 disposing of their writ petition being C.W.J.C. No. 9183 of 2018 and the contempt petition is pending consideration of the Hon'ble Court.”

5. It is in this background that we have heard the matter in order to analyze the allegations that have been raised.

6. The three petitioners in C.W.J.C. No.11412 of 2017 (LPA No.1143/18) were engaged on daily wages as Mazdoors. Kapildeo Roy was engaged on 11.1.1974, Ishlok was engaged on 11.1.1974 and Narayan Prasad was engaged on 23.4.1974. Similarly, the petitioner of the other writ petition Nand Kishore Prasad (LPA No.1144/18) was engaged on 1.4.1973. They continued, and their continuance was in a way regularized as Mazdoors in the year 1989 as their services were endured by the High Court. This engagement without there being any service rules brought about their consideration for appointment on substantive basis and vide order dated 20th of April, 1989 a large number of similarly situate employees, including the respondent petitioners and the others mentioned in the chart above, were extended the benefit of appointment on temporary basis on the post of Peon in a regular pay-scale of Rs.350-425. This was in effect a substantive appointment. It may be mentioned that these appointments were made when



the State of Bihar had not been bifurcated into Bihar & Jharkhand. This was followed by confirmation of the respondent-petitioners vide office order dated 15th of October, 1992 issued by the High Court. Their dates of confirmation were also mentioned in the said office order. They have also been given a higher pay-scale in 2015 and are designated as Jamadars.

7. It appears that at the time of their appointment on temporary basis in 1989, the respondent-petitioners produced medical certificates about their fitness issued by the In-charge Medical Officer of the Primary Health Centre of the Patna High Court. In the said fitness certificate, the age disclosed according to the own statement of the petitioners was as follows:

Kapil Deo Roy- 22 years as per the certificate dated 3.5.1989, Ishlok- 25 years as per the certificate dated 27.4.1989, Narayan Prasad- 21 years as per the certificate dated 01.05.1989 and Nand Kishore Prasad- 24 years, as per the certificate 03.05.1989. It is to be noted that these documents have been filed by the respondent-petitioners along with the writ petition.

8. Except the aforesaid documents, there was no



other proof of date of birth and the date of birth on the strength thereof was accordingly recorded in the service book as follows:

1. Kapil Deo Roy-- 03.05.1967
2. Ishlok-- 27.04.1964
3. Narayan Prasad— 05.01.1968
4. Nand Kishore Prasad- 03.05.1965.

9. It appears that the High Court was facing difficulty in recording the authenticated date of birth in the absence of any proof of date of birth of these daily wage Mazdoors and it is from this point of view that the then Chief Justice on 24th of July 1998 passed the following order:-

“It appears that while engaging Mazdoors of daily wage basis, neither their certificate with regard to educational qualification, nor any declaration in respect of their age is being taken into consideration, on the other hand, directly the Mazdoors are engaged considering the work load and in this way they are being allowed to continue.

However, Patna High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1997, envisages that the lowest category of post i.e. peon is to be filled up from amongst the Mazdoors, who are working on daily wage basis.

Recently a difficulty is felt by the Registry that while appointing peons on the basis



of seniority amongst the Mazdoors, the age which they give is not authenticated, with the result most of the peons who have served for a longer period as peon, before they reach the age of superannuation, physically become infirm and invalid to discharge their normal duty as a peon. This is, perhaps, on account of giving incorrect declaration of age at the time of their appointment/absorption as a peon and as yet no criteria in this regard is evolved.

The Labour Law of our country in this regard is emphatic. The Labour Law of our country issues mandate upon the authority not to engage minors in employment. Thus, under the Law only a major person can be engaged in the service.

Therefore, a care is to be taken that at the time of engaging Mazdoor on daily wage basis, in the application forms, they be asked to give correct date of birth supported by School Leaving Certificate and in the absence of School Leaving Certificate, or any declaration made in this behalf, the authority may assess the age keeping in view the fact that the person concerned should not be of less than 18 years age at the time of his engagement as Mazdoor on daily wage basis. On this criteria engagement of Mazdoor on daily wage basis will be made.”

10. In view of the aforesaid order, the then Chief Justice after taking into consideration various factors observed that most of the peons have either become physically infirm or invalid to discharge their daily duties as they have served for a



long period and in the absence of disclosure of age at the time of their appointment and there being no criteria ever evolved, it was appropriate that care be taken in future engagements. The then Chief Justice also observed that they be asked to give correct date of birth supported by School Leaving Certificate and in the absence of School Leaving Certificate, or any declaration made in this behalf, the authority may assess the age keeping in view the fact that the candidate concerned should not be of less than 18 years age at the time of his engagement as Mazdoor on daily wage basis or at the time of engagement on temporary basis.

11. At this stage, it may be mentioned that the aforesaid order had been passed keeping in view the Rules introduced in the Patna High Court, namely, the Patna High Court Officers and Staff (Conditions of service and Conduct) Rules, 1997. The said Rules prescribe the age of superannuation of Class-IV employees as 60 years.

12. In the year 2013, an exercise was undertaken that those peons including Jamadars who had completed more than 42 years of service should not be allowed to continue and, accordingly, orders were passed retiring them on 11.10.2012 and 11.11.2012. A representation was made on behalf of the



employees that was rejected by the then Chief Justice and was communicated to the Employees' Union vide order dated 3rd of January, 2013 of the then Registrar General. A perusal of the said communication of the Registrar General also indicates a benevolent stand taken by the High Court that those employees who were to retire on completion of 42 years of service, one member of their family who may be eligible shall be considered for employment for which an application along with credentials may be made available to the Registrar General. The said order is extracted hereinunder:-

"दिनांक 18.10.2012 के अभ्यावेदन के सन्दर्भ में एतद् द्वारा सूचित किया जाता है कि चतुर्थवर्गीय कर्मचारियों की सेवानिवृत्ति के आदेश को वापम लेने के संबंध में आपकी मांग माननीया मुख्य न्यायाधीश द्वारा अस्वीकृत कर दी गयी है।

तथापि, दिनांक 11.10.2012 एवं 1.11.2012 के प्रभाव से सेवानिवृत्त किये गये इस न्यायालय के चतुर्थवर्गीय कर्मचारियों के परिवार से कोई एक सदस्य, जो योग्य एवं बेरोजगार हों, अपनी जन्म तिथि एवं शैक्षणिक योग्यता से संबंधित प्रमाण-पत्र के साथ स्वहस्तलिखित आवेदन पत्र अधोहस्ताक्षरी के कार्यालय में जमा कर सकते हैं।

कृपया सभी संबंधित सेवा निवृत्त कर्मचारियों को तदनुरूप सूचित करें।

माननीय मुख्य न्यायाधीश के आदेशानुसार"



13. The High Court administration further undertook an exercise with regard to the manner of assessment that was carried out whereafter a representation was filed and then ultimately on 30th of July, 2015 a decision was taken by the then Chief Justice enhancing the period of maximum service up to 44 years instead of 42 years, presumably keeping in view the fact that a candidate at the time of entry cannot be less than 16 years. It appears that the Rules relating to qualifying years of service for pension under the Bihar Pension Rules, which mentions that the qualifying service would be counted only from the age of 16 years was kept in mind.

14. As a consequence thereof, the respondent-petitioners and the other employees who were to retire having completed 44 years of service were served with the office Memos dated 31st March, 2017 and 7th April, 2017 respectively. Raising a challenge to the same, the writ petitions giving rise to the present controversy as well as other writ petitions were filed that have been allowed on the ground that while appointing the respondent-petitioners on substantive basis in 1989 no such dispute was raised about the correct assessment of the age and assessment by the Medical Officer was taken to be reflecting the correct age of the candidates. It



may be noted at this juncture that the said medical certificates are not on the strength of any Radiological or Ossification tests. The age mentioned therein is the own disclosure of the concerned employee.

15. The learned Single Judge, however, has recorded that since there was no dispute about this fact, that there was no doubt about the assessment of age at the time of their initial engagement, then the exercise undertaken thereafter to assess and re-assess the age and then to retire the respondent-petitioners is not founded on any rational basis. The learned Single Judge has also relied on the fact that in the second assessment which was carried out the approximate age of the respondent-petitioners was assessed between 55 to 60 years. Reliance was placed on the judgement of this Court in the case of Buddhadeo Das (C.W.J.C. No.9430 of 2008) to hold that in cases of such assessment, the lower age deserves to be accepted. From this point of view also, the learned Single Judge held that the assessment of age, therefore, has to be made on the aforesaid exercise already undertaken and not on a presumption, as has been done in the present case. The argument on behalf of the High Court calculating the maximum service as 44 years on the basis of the fact that an



employee would be not less than 16 years on the date of his engagement has been repelled by the learned Single Judge on the ground that the calculation of such an age has to be made on the basis of the date of substantive appointment and not from the date of initial date of entry as a daily wager where it is admitted by the High Court that minors had been engaged in the service of the High Court. The learned Single Judge, therefore, has held that once this exercise had been undertaken and the date of birth was recorded in the service book on the basis of their age assessment, it was not open to the High Court to take a different stand and retire the respondent-petitioners on completion of 44 years of service.

16. Shri Piyush Lall, learned Counsel for the respondent High Court, has urged that the aforesaid findings cannot be sustained keeping in view the fact that a certificate given by a Medical Officer of fitness cannot be proof of age. For this, reliance has been placed on the judgement in the case of Registrar General, High Court of Madras Vs. M. Manikkam, (2011) 9 SCC 245. It is urged that such documents are unreliable and unrealistic. It has also been held that such medical certificates are vague and cannot be relied upon. Reference be had to the ratio of the said judgement contained in paragraph Nos.20 to



22 which is extracted hereinunder:-

“20. It must be indicated at this stage that Respondent 1-plaintiff himself went to the Medical Board and got himself examined and obtained the aforesaid report which was brought in evidence. At the top of the aforesaid medical certificate, it is written as “Age Proof Certificate”. The said age proof certificate is signed by the Chairman and also signed by two other members. What is recorded in the said age proof certificate is extracted below:

“This is to certify that the Medical Board Office at Tirupur have carefully examined Thiru Manickam So. Thiru V. Muthusamy, Subordinate Judge, Udumalpet, an applicant for age certificate. His identification marks are:

1. A black mole on the right collarbone.

2. A black mole on the right hand.

According to my physical examination and personal of his appearance of the individual, he appears to be about 48 years (forty-eight years) according to his own statement.”

21. In out considered opinion, the said medical certificate is very vague and unreliable. Whether or not any radiological examination was done and if so, of what nature, and also whether any ossification test was done or not is not reflected from the said report. It is only stated in the certificate that on the basis of physical examination and from his appearance and on the basis of his own statement the age of the respondent was determined as 48 years.



22. This Court in Ramdeo Chauhan V. State of Assam while dealing with the reliability of the ossification test held as follows: (SCC p.739, para 21)

21. ... An x-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform.”

17. Shri Lall has further urged that the power to regulate conditions of service and to prescribe a particular age of retirement on the basis of length of service is a matter of policy which does not deserve judicial interference. He has cited the judgement in the case of Senior Government Employees Welfare Association & Ors. Vs. the State of Nagaland & Ors., (2010) 7 SCC 643. Shri Lall, therefore,



contends that a rational decision was taken to retire such peons who had served for 44 years and any continuance beyond that would lead to absurd results for which he reiterated the argument raised before the learned Single Judge that if 44 years are to be counted from the date of the first engagement of these peons, which is in the years 1973 and 1974, then the respondent petitioners at the time of their initial engagement as daily wagers would have been not more than 7 or 8 years of age. Correspondingly, he also urges that if 44 years of service are to be counted from the year 1989 then this will also lead to an absurd result keeping in view the age of the respondent-petitioners who would be continuing beyond an age that cannot be comprehended in any service jurisprudence.

18. Responding to the said contentions, learned Senior Counsel Shri D.K. Sinha for the respondent-petitioners, contends that once the High Court had undertaken an exercise to get the approximation of the age of the respondent-petitioners assessed, the High Court cannot take a different view and if the years of service as put in by the respondent-petitioners are not taken into account, they would be losing pensionary benefits and other consequential emoluments upon retirement. He, therefore, contends that the learned Single



Judge has taken a balanced view after assessing the entire states of affairs in the High Court relating to appointments against Class-IV posts. The date of birth as recorded in the service book cannot be altered after more than 25 years.

19. We have considered the submissions raised and perused the documents on record. The learned Single Judge has proceeded on the assumption that there is no dispute that the respondent-petitioners were minors when they were appointed. The fact that the respondent-petitioners were minors when they were appointed is not supported by any document. There is no proof of their age when the respondent-petitioners were inducted as daily wagers in 1973 and 1974. The respondent-petitioners have taken a stand in their representations and also before the learned Single Judge about their justification for being appointed as minors on the strength of the Bihar Shops and Establishment Act, 1953 where an apprentice could be inducted at the age of 12 years and the definition of the word “child” is less than 14 years. The respondent-petitioners in their counter affidavit filed in the present appeals have stated that they were minors, but this was not the pleading in the writ petition nor was there any evidence, proof or document that they were of a particular age below the age of majority when



they were inducted as daily wagers. If the contention of the respondent-petitioners is accepted, then, in view of the age of retirement as 60 years, which is nowhere challenged or disputed, Kapildeo Roy, at the time of his induction on 11.1.1974 would be 6 years and 8 months, Ishlok, on the date of his induction as a daily wager on 26.4.1974 would be 8 years and 11 months, Narayan Prasad, on the date of his induction as a daily wager on 23.4.1974, would be 6 years and 3 months and Nand Kishore Prasad, as on the date of his induction as a daily wager, i.e. on 1.4.1973, would be aged about 7 years and 10 months.

20. This fact of assessing the approximate age at the time of induction has been dealt with by the learned Single Judge by observing that it is not in dispute that they were minors when these persons were appointed and the issue of their assessment after quarter of a century being raised by the High Court is unjustified as their dates of birth had been recorded on an assessment of the disclosure of their age in the medical fitness certificates issued in 1989. The learned Single Judge has held that if the High Court wanted to alter the same, it could have done it within a reasonable span of time, but that having not been done and respondents having been allowed to



continue, it was impermissible for the High Court to have attempted it now. We find this logical construction to be not legally sustainable for the reason that neither the High Court nor the Judges can be imagined to have engaged daily wagers of the age of 6, 7 or 8 years. The rational calculation of 44 years of service taking the age of retirement as 60 years is a pure mathematical calculation which admits of no doubt. The learned Single Judge has overcome this doubt by accepting that minors could have been appointed and that the High Court could not have made an assessment of the age of the employees after 44 years. This we find to be unacceptable in law inasmuch as service jurisprudence is not different for the High Court when it comes to the maximum age prescribed for retirement and the period of service which is to commence only after a person attains majority. The medical certificate of fitness, which was issued in the year 1989, was clearly on a voluntary disclosure of the age of the respondent-petitioners which was an approximate age and does not appear to be a correct disclosure. The respondent-petitioners have nowhere brought any document to support the date of birth as recorded in the service book, like a family register or any other document if they were illiterate, when they were engaged as



daily wagers. The High Court also appears to have taken a soft and compassionate attitude in the continuance of the respondent-petitioners.

21. There is one more aspect that the maximum period of service is controlled by the prescription of age. The determination of age, even medically, can be by way of a Radiological test or an Ossification test, as is generally got conducted for the purpose of such determination. There is nothing on record to indicate about any such test having been carried out so as to contradict the approximate age of the respondent-petitioners as calculated after reducing 44 years of effective service, as explained above. The medical certification as relied on does not reflect the assessment of age on the basis of any such medically recognized test.

22. The minutes of the Chief Justice dated 24th of July, 1998, the minutes dated 6th of March, 2014 and the minutes dated 30th of July, 2015 clearly indicate a balanced view having been taken. The certificate and the report of the Medical Board was not considered acceptable in the light of what has been calculated on the basis of age of retirement in the absence of a valid age proof. Learned counsel for the High Court Shri Piyush Lall has, therefore, rightly relied on the judgement in



the case of Registrar General, High Court of Madras Vs. M. Manikkam, (2011) 9 SCC 245 where such aspects were taken into account and it was held that such medical certificates were vague and unreliable. We find ourselves in agreement with the submission of the learned counsel for the High Court on the facts of the present case where the respondent-petitioners have not been able to establish as to on what legally acceptable evidence was their date of birth recorded in the service book.

23. It is correct that an exercise was undertaken. These facts were assessed by the then Chief Justice and by the successor Chief Justice who, upon such calculation, found it fit to ultimately allow the respondent-petitioners to continue till they complete 44 years of service. If the said optimum line is not maintained, then the result would be that Kapildeo Roy would retire on 31.5.2027, Ishlok would retire on 30th April, 2024, Narayan Prasad would retire on 31st January, 2028 and Nand Kishore Prasad would retire on 31st of May, 2025. That would extend their period of service from 49 years to 51 years. It is this calculation which impels us to take a different view in the matter as in no service law can the maximum period of service be calculated beyond the lawfully permitted period of service.



24. In the instant case, the High Court has on the lenient side taken the stand that since the Bihar Pension Rules make a provision for calculating the qualifying years of service after the age of 16 years, therefore, reducing 16 years from 60 years brings the maximum period of service as 44 years. We find this to be a just and reasonable calculation based on a rational basis without condoning the acceptability of minors being engaged in the High Court between the age of 6 to 8 years. The law cannot be laid down to give benefit to a few on the basis of an approximation of age, without any material to support the date of birth as recorded in the service book of the respondent-petitioners. The learned Single Judge has not appreciated this aspect of the matter that there is no basis at all for recording the date of birth in the service book of the respondent-petitioners and the disclosure of the age made by them voluntarily at the time of medical examination does not appear to be truthful. The approximation of age in the medical fitness certificate that has led to the recording of the date of birth in the service record appears to have been disclosed for attaining more years of service, which aspect was located in the year 1998 itself.

25. The general principle that the date of birth cannot



be corrected at the fag end of the career would not be attracted on the facts of the present case, inasmuch as, the fact of having completed 44 years of service where the maximum age of retirement is 60 years, remains unrebutted. It was for the respondent-petitioners to have established as to what was their age when they were inducted as daily wagers in 1973 and 1974 for which there is no evidence. The learned Single Judge has not appreciated the aspect that this burden lay on the respondent-petitioners to substantiate their stand of date of birth and, therefore, this burden not having been discharged by any corroborating evidence, to draw a conclusion that the date of birth is final as recorded in the service book, does not appear to be correct.

26. The learned Single Judge has assumed that it is a matter of record that the respondent-petitioners had been employed as minors. There is no such record and this factual recital is clearly erroneous. The conclusion drawn by the learned Single Judge about the orders of the Chief Justice dated 24th July, 1998 and 30th July, 2015 that it was an admitted position of the High Court that the respondent-petitioners were minors is not entirely correct, inasmuch as, the orders do indicate that the assessments had to be made as their induction



were leading to anomalies and an observation was also made that they were of adolescent age who may have been engaged for domestic work even before attaining majority, but, in our opinion, the same does not amount to admitting a fact that they were 6 years or 7 years or 8 years of age when they were employed. The assumption of the learned Single Judge that there is an admission of the High Court that they were minors, therefore, proceeds to conclude a fact which has been stated differently in the orders of the Chief Justice. There is, therefore, no admission of the fact that they were inducted when they were 6, 7 or 8 years of age at the time of their engagement. These facts are clearly disputed by the High Court and, therefore, the conclusion of the learned Single Judge that these facts are undisputed does not appear to be correct. The successive Chief Justices have taken appropriate steps for correcting the errors that were essential to the very foundation of laying down the principles on the basis whereof the age of retirement was to be given a meaningful, legal and valid existence.

27. At this stage, we may also note that the maximum age of superannuation for non-ministerial staff can be fixed by the employer and in the present case the same being 60 years is



not under challenge. The rationality of fixing of an upper age limit of retirement or superannuation depends on assessment of required efficiency and the nature of the duties which might affect efficiency due to advancing age. There is another side of the coin, namely, upon superannuation the posts becoming vacant are an opportunity for employment for those who are waiting in the queue. Allowing an employee to continue even beyond the age of superannuation can have adverse effects on those who are seeking employment.

28. Even assuming for the sake of arguments that there is no on set of senile inefficiency, fixing an age of retirement and allow an employee to get disengaged at a particular age is not forcing him to idleness even if they were capable of rendering efficient service. It is in order to maintain an average expectancy of maximum years of service depending upon the nature of duties that the age of retirement is fixed even though the dividing line between performance and efficiency on one side and deterioration and inefficiency on the other has to be carefully woven at the time of fixing the age of retirement. The likely repercussions of either decreasing or increasing the age of superannuation has to be taken into account and it is not necessary for the employer to allow an



employee to continue until he is worn out having one foot in the grave. Nonetheless, these are matters of policy at the time of either fixing the age of superannuation or for a revision even thereafter. In the instant case, there is no dispute about the maximum age of service ending in retirement at 60 years.

29. We are conscious that the respondent-petitioners have been our old vanguards and may have served us well, but the fact remains that their departure from the service has to be governed by rationality and which appears to have been fulfilled by the orders issued by the successive Chief Justices on the basis of completion of 44 years of service. The same being rational, just and reasonable, we do not find any prejudice to the respondent-petitioners as they have completed their successful years of service of 44 years.

30. They cannot be presumed to be possessed of a youthful body while carrying an old mind. They have to perform physical duties with an alert mind and, therefore, they should be, in the words of Shakespeare in Merchant of Venice “Young in limbs, in judgments old.” In our opinion, it would be difficult to prolong their youth beyond 60 years on the strength of paper fitness certificates. “There is an old proverb that is true; Age should think, and youth should do.” The respondent



petitioners, on account of having served for 44 years, have put in both, their youth and manhood for these long years. It is time for them to take in sail.

31. Crabbed age and a waggling posture is not suited for a Jamadar. His presence as an official mascot bedecked in regalia announces the authority of a Judge and, therefore, any element of dotage would mar the purpose of his employment.

32. There are so many things that we unwillingly give up. One of them is the desire to earn. This should, however, be not unceasing and, therefore, there is a prescription of retirement. It will, therefore, not be appropriate to perpetuate a continuance that defies logic as well as law. The High Court took time to notice a flaw, but once acknowledged, the same has to be rectified and not made everlasting, otherwise it may be a wrong precedent. A continued passive acceptance, may be on account of a benevolent attitude for its own employees, by the High Court does not amount to discarding or applying the doctrine of desuetude to the provisions of superannuation now prescribed under the rules.

33. The calculation made in arriving at the conclusion is neither unmathematical nor imaginative. It is based on the facts as exist and according to the prescriptive age of



retirement. On the other hand, the presumption of minors being engaged as a fact is based on an assumption of a culture existing in the High Court of engaging minors. This can, however, be not stretched to the extent that the High Court was in the regular habit of engaging children of 6 to 8 years of age as daily wagers. This assumption, therefore, is imaginary and not real. One can imagine the engagement of a 16 year old due to want of proof of date of birth or of age, as may be possible in the present set of facts and, therefore, the then Chief Justices were prudently right in taking a pragmatic view that calculating a maximum of 44 years of service on the basis of 60 years as the prescribed age of superannuation, would lead to a reasonable and logical conclusion that the respondent-petitioners must have been engaged at the age of 16 years. With due respect, this analysis has been discarded by the learned Single Judge for no valid reason. The discovery of an incorrect fixing of a date of birth in the service record stands substantiated as reasoned out hereinabove and any view to the contrary would be refusing to acknowledge real facts as against our assumptions that do not withstand the scrutiny of law. A lapse of time of a quarter of a century, as observed by the learned Single Judge, does not allow a conversion of a non-



existing fact to the advantage of the respondent-petitioners.

34. In the result, the appeals deserve to be allowed and the impugned judgement deserves to be set aside.

35. We, accordingly, allow these appeals and set aside the impugned judgement of the learned Single Judge dated 29.1.2018. The Registrar General is directed to take appropriate steps in the light of above and issue orders accordingly. We make it clear that in case any of the respondent-petitioners have earned salary coupled with actual payment pursuant to the impugned judgement of the learned Single Judge, the same would not be recoverable. A copy of this judgement be placed on record of all the cases arising out of the same issue.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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