

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17284 of 2014

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1. Md. Mokhtar and Ors S/o Sheikh Yakooob Resident of Village Mahuawa, P.O. Phulwaria, Police Station Dhaka, District East Champaran.
 2. Dhruv Nath Pandey S/o Sri Awadhesh Kumar Pandey Resident of Rampur Chargaha, P.O. and P.S. Tirkolia, District East Champaran.
 3. Shyam Shankar Mishra S/o Late Paspel Mishra Resident of Village and P.O. Karmawa, Police Station Dhaka, District East Champaran.
 4. Washistha Tiwary S/o Late Lalan Tiwary Resident of Village Kaswa Barhara, P.O. Barhara Lakhen Sen, Police Station Dhaka, District East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, East Champaran at Motihari.
3. Chief Engineer, Water Resources Department, Balmikinagar.
4. Civil Surgeon-cum-Chief Medical Officer, Motihari, East Champaran.
5. Executive Engineer Dhaka Canal Remoulding Division, East Champaran.
6. Executive Engineer, Water Resources development Department Research Motihari, East Champaran.
7. Executive Engineer, Water Resources Development Department, Dhaka, East Champaran.
8. Executive Engineer Planning and uality Control Division, WRD, Motihari, East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Manoj

For the Respondent/s : Mr.Sharad Kumar Sinha, GP-15

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT & ORDER

4 08-06-2020 Four petitioners in the present writ application are seeking a direction to the respondents, particularly, the Chief Engineer, Water Resources Department, Balmikinagar, Government of Bihar (Respondent No.3) to act upon and pass necessary orders in the light of re-determination of their age



done by the Civil Surgeon-cum-Chief Medical Officer, Motihari, East Champaran, communicated to respondent No.3 through letter 02.02.2013. It is their case, as averred in paragraph 1 of the writ application that upon re-determination the age of petitioner Nos. 1 to 4 has been declared as 33,42,47 and 45 years respectively.

2. I have heard Mr. Manoj Kumar Manoj, learned counsel for the petitioners and Mr. Sharad Kumar Sinha, learned Government Pleader No.15, appearing for the State.

3. In order to appreciate the core issue involved, certain essential facts need to be taken note of.

4. The petitioners were working as daily wage employees in different offices under respondent No.3 services were regularized. A decision was taken by the District Establishment committee in its meeting held on 11.12.1990 to regularize their services. Consequently, their services were regularized against permanent establishment through letter dated 20.09.2008. Upon regularization, for the purpose of opening their respective service books, the dates of birth of the employees so regularized were required to be obtained. There was no difficulty in respect of such employees who held matriculation qualification, for the purpose of entry of their date



of birth in their service books. For those who did not possess the qualification of matriculation, it was decided that their age would be determined by a Medical Board, as is apparent from the office order dated 12.09.2009 issued by respondent No.3, which has been brought on record by way of Annexure-2 to the writ application. They were referred to the Civil Surgeon-cum-Chief Medical Officer, East Champaran, Motihari by the Department for the purpose of determination of their age by a Medical Board, in September/October, 2009. A Medical Board accordingly, determined the age of petitioner Nos. 1 to 4 as 50 years, 52, years, 55 years and 50 years respectively. This is not in dispute that these petitioners did not raise any objection over the age determination done by the Medical Board in January, 2010.

5. It is the case of the petitioners that one Madan Lal Das, whose service was also regularized in the same transaction and his age was determined by the Board with the present petitioners approached this Court in 2012 by filing a writ application, giving rise to CWJC No. 12163 of 2012, which was disposed of with a direction to respondent No.3 to send the name of the petitioner of that case before Civil Surgeon-cum-Chief Medical Officer, Motihari for re-determination of his age,



by a Medical Board, within a period of one month from the date of receipt/production of a certified copy of the order. After disposal of CWJC No. 12163 of 2012, other persons (not these petitioners) also approached this Court, questioning the determination of their age by filing writ application giving rise to CWJC No. 23482 of 2012. The said writ application was disposed of by an order dated 19.12.2012 in terms of the earlier order dated 30.08.2012 passed in CWJC No. 12163 of 2012. The said two orders are being reproduced herein below:-

Order passed in CWJC No. 12163 of 2012

“30.08.2012. Upon hearing learned counsel for the parties, the writ petition is disposed of with a direction to the Chief Engineer, Water Resources Department, Balmikinagar, Government of Bihar, Patna to send the name of the petitioner before the Civil Surgeon-cum-Chief Medical Officer, Motihari for re-determination of age of the petitioner by the Medical Board within a period of one month from the date of receipt/production of a certified copy of this order.

Order passed in CWJC No. 23482 of 2012

19.12.2012. Learned Counsel for the petitioner submits that



the issue raised by him in the present writ application is now covered by the decision rendered in CWJC No. 12163 of 2012 passed on 30.08.2012 (Annexure-6 to the writ petition).

The writ application is disposed of with an observation that if the case of the petitioner comes within the ambit of said decision, the respondents will be guided by the same.”

6. It is reiterated here that these petitioners had not questioned the determination of their age done on 27.01.2010. It is their case, however, that their cases were also referred to, to the Civil Surgeon-cum-Chief Medical Officer, East Champaran, Motihari for re-determination of their age in the light of the aforesaid two orders of this Court, as quoted above. There is statement made in paragraph 8 of the writ application that they were relieved and sent to the Civil Surgeon for re-determination of their age. There is no document, however, to support the said averments made in the writ application, which is said to be based on personal knowledge of the deponent, petitioner No.1. It is their further case that their respective age has now been re-determined and consequent thereon, the age re-determined as on



28.01.2013 has been communicated by the Civil-Surgeon-cum-Chief Medical Officer, East Champaran, Motihari to respondent No.3 by letter dated 02.02.2013. The age of petitioner Nos. 1 to 4 on re-determination have been found to be 44 years, 43 years, 47 years and 45 years, as on 28.01.2013 respectively.

7. In the aforesaid background, the claim of the petitioners is that their respective age should be mentioned in the service book as re-determined subsequently by the Civil Surgeon-cum-Chief Medical Officer as on 28.01.2013 and they should not be compelled to superannuate on the basis of previous determination of their age.

8. I.A. No. 7433 of 2017 has been filed seeking amendment in the writ application as petitioner No.2 has been made to retire with effect from 31.12.2017 on the basis of the original determination of his age. I.A. No. 2 of 2020 has been filed to question the decision, whereby the petitioner Nos. 1 and 4 have been made to superannuate on the basis of original determination of their age.

9. A counter affidavit has been filed on behalf of the respondents-State of Bihar, wherein it has been specifically stated that petitioners approached directly the Civil Surgeon-cum-Chief Medical Officer, Motihari for re-determination of



their age in the light of the order dated 30.08.2012 passed in CWJC No. 12163 of 2012. It has further been stated that the Civil Surgeon-cum-Chief Medical Officer, without obtaining any permission from the appointing authority, constituted a second Medical Board and directed the petitioners to be present for the purpose of re-determination of age. It is stated in the counter affidavit that when the office of the Chief Engineer received the communication from the Civil Surgeon-cum-Chief Medical Officer, Motihari he sought clarification as to the circumstance in which there was variance in determination of the age of the petitioners and other at two stages. The Civil Surgeon-cum-Chief Medical Officer, Motihari sent his reply on 30.05.2013 stating therein that age of persons beyond 40 years cannot be accurately assessed and their age was re-determined on the basis of physical appearance.

10. On careful perusal of the pleadings of the parties with the documents annexed thereto, it is an undisputed fact that there was no request made by respondent No.3 to the Chief Medical Officer to re-determine the age of these petitioners. On perusal of the letter dated 02.02.2013 written by the Civil Surgeon-cum-Chief Medical Officer, Motihari to respondent No.3 which is at Annexure-5, it is clear that there was no request



made to him to constitute a Board for the purpose of re-determination of the age of the petitioners and other employees. The Civil Surgeon-Cum Chief Medical Officer has referred to CWJC No. 23482 of 2012 only as the basis for him to constitute a Medical Board for re-determination of their age of some of the employees regularized. There was no direction to the Civil Surgeon-cum-Chief Medical Officer, Motihari either in CWJC No. 23482 of 2012 or in CWJC No 12163 of 2012 to re-determine the age of these petitioners. The directions were issued in those two cases in respect of the petitioners of those cases, that too, to the respondent No.3 to send their names before the Civil Surgeon-cum-Chief Medical Officer, Motihari. The circumstance in which the Civil Surgeon-cum-Chief Medical Officer, Motihari undertook the exercise of re-determination of age of these petitioners without any reference having been made by the appointing authority is a serious matter which renders his conduct suspicious warranting an enquiry.

11. Secondly, and more significantly, the determination of age of the petitioners was done originally in 2010. They did not raise any objection. There is no pleading that they ever filed any representation against determination of their age for the purpose of entry in the service book. It is not their



case that they were not knowing what age was determined in their cases. Curiously, after passing of the orders of this Court as quoted above, they appeared before the Civil Surgeon-cum-Chief Medical Officer for re-determination of their age invincibly without any reference made by the appointing authority.

12. In such circumstance, the petitioners cannot claim any advantage on the basis of re-determination of their age done by the office of the Civil-Surgeon-Cum-Chief Medical Officer, Motihari without any jurisdiction and without any request made by the competent authority. The letter dated 02.02.2013 of the Civil Surgeon-cum-Chief Medical Officer can be directed to be given effect to by issuance of a writ in the nature of writ of mandamus in the facts and circumstances of the case.

13. This application has no merit and is accordingly, dismissed, in the backdrop of aforementioned discussions.

14. The Interlocutory applications also stand dismissed, in the facts and circumstances noted above.

15. I have already noted that conduct of the Civil Surgeon-cum-Chief Medical Officer in undertaking re-determination of the age of the petitioners and others without any formal request having been made by a competent authority cannot be said to be aboveboard. I, therefore, direct the Principal



Secretary, Health Department, Government of Bihar to cause an enquiry into the circumstance in which the same was done and consider whether conduct of the then Civil Surgeon-cum-Chief Medical Officer, East Champaran at Motihari warrants any disciplinary proceeding against him.

16. Let a copy of this order be transmitted to the Principal Secretary, Health Department, Government of Bihar forthwith.

(Chakradhari Sharan Singh, J)

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