

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6747 of 2018

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Dilip Kumar Singh, Son of Late Yogendra Prasad Singh, Resident of Village-
Khirma Pathra, Police Station- Kewati, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Bihar, Patna.
2. The Principal Secretary, Land Reform Department, Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The Deputy Collector, Establishment, Darbhanga.
5. The Additional Collector, Darbhanga.
6. The Sub Divisional Officer, Darbhanga.
7. The Circle Officer-cum-Establishment Officer, Bahadurpur, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.

Mr. Vipin Kumar Singh, Adv.

Ms. Smriti Singh, Adv.

For the Respondent/s : Mr. Raj Kishore Roy, GP-18

Ms. Purna Anand, AC to GP-18

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 04-02-2021

Petitioner in the present case has invoked the writ
jurisdiction of this Court for the following reliefs:-

- (i) *For issuance of writ in the nature of certiorari for quashing of the order passed by the District Magistrate, Darbhanga vide memo no. 104 dated 17.01.2018 whereby the petitioner has been compulsorily retired from service with effect from 30.04.2015 and a direction has been given to recover an amount of Rs. 8,58,068/- from the retiral benefits of the petitioner in lieu of the service received by the petitioner from 01.05.2015 to 03.03.2017.*
- (ii) *For issuance of writ in the nature of certiorari for quashing of the enquiry report submitted by the Enquiry Officer on 24.06.2017 vide letter no. 915 alongwith the supplementary inquiry report*



submitted vide letter no. 1260 dated 16.08.2017.

- (iii) For a direction to the respondents to reinstate the petitioner as the Finance Officer with effect from 30.04.2015 with all consequential benefits.*
- (iv) For issuance of writ in the nature of mandamus for commanding the respondents for payment of salary for the entire period during which he remained his suspension.*

2. As has been recorded in the order dated 28.01.2021, let it be reiterated that learned counsel for the petitioner has confined his prayer to assail the order directing recovery of Rs.8,58,068/- from the retiral benefits of the petitioner. Thus, so far as other reliefs prayed in the writ application are concerned, those have not been pressed before this Court.

Case of the petitioner

3. It is the case of the petitioner that he was appointed as Finance Officer on 13.05.1982 and during the service period because of his sincere performance he was granted the benefit of Time Bound Promotion and was given the enhanced scale of pay of Rs.9300-34800 with grade pay of Rs.5400/- vide order dated 22.07.2016.

4. It is the submission of the petitioner that while he was working in the Department, a seniority list was prepared by the Department in the year 1993 in which the date of birth of the petitioner was shown as 05.04.1955. As per this date of birth the



petitioner was due to retire on 30.04.2015 but he was never given any intimation as regards his due date of retirement. He continued to serve in the department even after 30.04.2015.

5. A memo bearing no.296 dated 03.03.2017 (Annexure-3 to the writ application) was issued by the District Magistrate, Darbhanga, the petitioner was placed under suspension and a memo of charge was served upon him vide memo no.557 dated 15.04.2017. Altogether four charges were levelled against the petitioner. It is his submission that no preliminary inquiry was held before initiation of the departmental proceeding.

6. The petitioner submitted his show cause answering all the charges, participated in the proceeding and claimed that his date of birth is 05.04.1958, therefore, according to him, he was supposed to retire from service on 30.04.2018.

7. The Department lodged an F.I.R. bearing Sadar P.S. Case No.198 of 2017 on 16.05.2017, the petitioner and one clerk namely Sudhir Kumar Jha was made an accused alleging loss of service book of the petitioner. The petitioner was granted bail in the said case on 27.07.2017.

8. It is stated in the writ application that initially when the enquiry was concluded and the enquiry report was



submitted to the District Magistrate, Darbhanga a direction was given by the District Magistrate, Darbhanga to consider certain documents presented by the petitioner and the District Provident Office, Darbhanga. Thereafter a detail enquiry was conducted and a supplementary inquiry report was submitted vide letter no.1260 dated 16.08.2017. A copy of the inquiry report as well as supplementary inquiry report have been enclosed as Annexure-7 series to the writ application.

9. The petitioner was served with a second show cause notice, he replied to the same. It is his submission that without considering the reply filed by the petitioner an order has been passed by the District Magistrate, Darbhanga vide memo no.104 dated 17.01.2018 whereby the petitioner has been compulsorily retired from service with effect from 30.04.2015 and a direction has been issued to recover an amount of Rs.8,58,068/- from the retiral benefits of the petitioner. This amount was paid to him in lieu of the service rendered by him from 01.05.2015 to 03.03.2017. A copy of the memo has been enclosed as Annexure-9 to the writ application and the same is under challenge now to the extent that the amount of Rs. 8,58,068/- should not be recovered from the petitioner.

10. Earlier the petitioner had preferred an appeal



before the Principal Secretary, Land Reforms Department, Government of Bihar which was not the correct forum, therefore, his appeal could not be considered.

11. When the plea of alternative remedy was taken before this Court on behalf of the State, learned counsel for the petitioner has pleaded that the writ application may be heard as there are grounds of violation of principles of natural justice and other jurisdictional issues are involved. In this regard the order dated 25.11.2020 passed by this Court may be referred to.

12. Mr. Bindhyachal Singh, learned counsel representing the petitioner has submitted before this Court that the amount of Rs.8,58,068/- has been paid to the petitioner against the work done by him, therefore it should not be allowed to be recovered keeping in view the ratio of the judgment of the Hon'ble Apex Court in the case of *State of Punjab & Others Vs. Rafiqu Masih (White Washer etc.)* reported in (2015) 4 SCC 334.

13. It is his further submission that from the charges levelled against the petitioner in 'Prapatra-ka' (Annexure-4 to the writ application) it would appear that according to charge no.2 the petitioner had received the service book from the Circle Office, Sadar, Darbhanga on 13.07.2016, therefore, the



respondents had no hindrance at least prior to the said date in retiring the petitioner from service on 30.04.2015 itself. In this regard, the contention of learned counsel for the petitioner is that even if the charge no.2 is taken to be correct, it is not in dispute that the service book of the petitioner was very much available with the respondents up to 12.07.2016, but despite availability of the service book of the petitioner, if the petitioner was not made to retire on 30.04.2015 and he continued to work even after the said date, the respondents would not be justified in affecting recovery of salary amount from the post retiral dues.

14. A counter affidavit has been filed on behalf of the respondent nos.3 to 7 which has been sworn by Circle Officer, Bahadurpur, Darbhanga. The respondents have justified the impugned order. It is stated that the petitioner was a Revenue Karamchari and while he was posted at Bahadurpur Anchal, one Ram Nath Paswan of village-Kothia, Bahadurpur made a complaint on 22.12.2016, stating therein that the date of birth of the petitioner is 05.04.1955 and he should have retired in the year 2015 itself but he is still in service. The Circle Officer, Bahadurpur found that the last payment certificate of the petitioner was received from Sadar Anchal but his service book was not yet received and, therefore, he wrote letter no.108 dated



18.01.2017 to Circle Officer, Sadar. He also called for the matriculation certificate from the petitioner. The Circle Officer, Sadar informed the Circle Officer, Bahadurpur that the petitioner has received his service book on 13.07.2016 but has not submitted as yet.

15. The petitioner took a stand vide his application on 22.01.2017 that his matriculation certificate was destroyed in the flood of 1987. He was called upon to submit his service book but he did not make available the same, thereafter he was suspended.

16. In course of enquiry, all the charges were found proved against the petitioner and after giving an opportunity to show cause the petitioner has been awarded punishment of compulsory retirement with effect from 30.04.2015 and the recovery of the amount mentioned above.

17. Learned counsel for the State has drawn the attention of this Court towards the inquiry report as contained in Annexure- '7' to the writ application. The inquiry officer has mentioned that the petitioner adopted an indifferent attitude in course of inquiry, he neither made available his educational certificate nor cooperated in verification of his age and despite letter no.710 dated 19.05.2017 calling upon him to disclose the



year in which he has passed the matriculation examination together with the name of the school from which he has passed the examination, no information was furnished by the petitioner. He did not disclose even the name of the school from where he has passed the matriculation examination.

18. As regards the charge no.2 the inquiry officer has found that this petitioner had received four service book including his own from the District Establishment Section, he made available three service book of others to Sri Sudhir Kumar Jha, the then clerk, Sadar Anchal, but retained his own service book for his own purpose. Sri Sudhir Kumar Jha has disclosed in his show cause that on the request of the petitioner, his service book was returned to him but the petitioner had obtained an acknowledgment showing the receipt of the four service books by the clerk. The bad intention of the petitioner could not be understood by the clerk.

19. Learned counsel for the State, therefore submits that in the facts of the present case, the ratio of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Others Vs. Rafiqu Masih (White Washer etc.)* would not apply. It is pointed out that the petitioner was aware of his date of birth mentioned in the seniority list but he had not raised any



objection as regards his date of birth, the seniority list was finally published, it is not the case of the petitioner that he was not aware of the date of birth mentioned in the seniority list, in such circumstance, the petitioner having indulged in taking away his service book by duping the clerk, the petitioner has only shown his intention to continue in service wrongfully and by depriving the Circle Office, Bahadurpur from getting correct date of birth of the petitioner. It is submitted that in such circumstance the petitioner having played a role in wrong continuation in service, he cannot be allowed to enrich himself unduly.

Consideration

20. Having heard learned counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds that in paragraph '7' of the writ application the petitioner admits that while he was working in the Department, a seniority list was published by the Department in the year 1993 in which the date of birth of the petitioner was mentioned as 05.04.1955 and in view of the same, he was supposed to retire on 30.04.2015. In the whole writ application, there is no averment that the petitioner was not aware of the publication of the said seniority list or that the



petitioner submitted any objection against the date of birth mentioned in the seniority list. He has taken a plea that in the provident fund register, the year of birth of the petitioner has been mentioned as that of 1958, however on going through the show cause submitted by the petitioner to the inquiry officer (Annexure-6 to the writ application), this Court finds that no such plea was taken at the earliest opportunity and in absence of there being any clinching material to support his plea and there being categorical finding by the inquiry officer on the aforesaid contention of the petitioner, this Court is not inclined to accept the submission of the petitioner based on the alleged entry in the provident fund register. The inquiry officer in his supplementary inquiry report has rightly taken a view that in absence of the matriculation certificate, the veracity of the date of birth entered in the provident fund register becomes doubtful.

21. The records of the case are speaking for itself. The petitioner had been aware of the date of birth mentioned in his seniority list, he was aware of the date of birth mentioned in the matriculation certificate, he was also aware of date of birth mentioned in the service book. In course of inquiry he neither produced the matriculation certificate nor any effort was made by him, if he had taken a stand that the matriculation certificate



has been lost in flood, to obtain a duplicate certificate from the Bihar School Examination Board, the intention of the petitioner to conceal his date of birth becomes apparent when he did not disclose before the inquiry officer the name of his school and the year in which he has passed the matriculation examination. No reasonable person can say that he does not remember the name of his school from where he has passed the matriculation examination.

22. It has come in course of inquiry that the petitioner had himself received the service book from the Sadar Anchal, in fact the said service book was to be sent to the Circle Office, Bahadurpur and the Circle Officer, Bahadurpur was looking for the same, understanding these facts the petitioner instead of allowing the service book to be sent to the Circle Officer, Bahadurpur received service book of the four Revenue Karamcharis including himself for submission before the District Establishment Section, he obtained a receipt from the clerk showing submission of four service books but then it has come in course of inquiry that he requested the clerk to hand over his own service book after verification and the clerk did that. Thereafter the service book was not returned.

23. To this Court it appears that there was a



concerted effort on the part of the petitioner in concealing the relevant documents and information from the Circle Office, Bahadurpur in order to continue himself in service even after reaching the age of superannuation. It is not denied in his pleadings that he was aware of the date of birth mentioned in the seniority list as 05.04.1955 and the same was never objected to by him, if this is the position in all fairness and showing his good conduct he should have informed the Circle Office, Bahadurpur which was awaiting receipt of service book from the Sadar Anchal that he would be retiring on 30.04.2015. The inquiry officer has recorded that in course of inquiry the petitioner adopted a completely indifferent attitude and was not at all cooperating.

24. Considering the aforesaid materials on the record and the discussions, this Court finds no error in the impugned order directing recovery of the amount stated above. No person may be allowed to enrich himself unduly and in case they indulged in doing so, they cannot seek an excuse under the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Others Vs. Rafiqu Masih (White Washer etc.)*. The Hon'ble Apex Court has cautioned on many occasions that its judgment should not be cited like an Euclid's theorem because a



slight change in the facts of the case would make a sea difference in the judgment of the Court. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Ltd. Vs. N.R. Vairamani reported in (2004) 8 SCC 579.**

25. This writ application has, thus, no merit. This Court finds no reason to interfere with the impugned order/orders.

26. The petitioner may represent before the District Magistrate, Darbhanga for recovery of the amount in few installments so that a sizable portion of his post-retiral benefits remains with him for fulfilling his own obligations. If such an application is filed before the District Magistrate, Darbhanga within a period of four weeks from today, the same will be considered by the District Magistrate and an appropriate decision shall be taken thereon within four weeks.

27. This writ application is disposed of with the aforesaid observations and directions.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	NAFR
CAV DATE	28.01.2021
Uploading Date	04.02.2021
Transmission Date	

