

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12419 of 2021

Janardan Paswan Son of Late Jarho Paswan Resident of Village and Post-
Ghorhat, P.S.- Bariyarpur, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department Government of Bihar, Patna.
2. The Director Social Welfare Department, Government of Bihar, Patna.
3. The Secretary, Social Welfare Department, Government of Bihar, Patna.
4. The Regional Director, Social Welfare Department, Government of Bihar, Patna.
5. The District Welfare Officer, Munger.
6. The District Welfare Officer, Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y. C. Verma, Sr. Advocate Mr. Sadanand Paswan, Advocate
For the Respondent/s	:	Mr. Krishna Kant Singh, AC to SC-10

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 28-11-2022

A reply to the counter affidavit has been filed on behalf
of the petitioner. The same is taken on record.

2. Heard Mr. Y.C. Verma, learned senior counsel for the
petitioner, duly assisted by Mr. Sadanand Paswan, learned counsel
and Mr. Krishna Kant Singh, learned AC to SC-10.

3. The present writ application has been filed seeking a
direction upon the respondents to ensure the payment of all the
retiral benefits of the petitioner, including the GPF, Group
Insurance, leave encashment and also for a direction for fixation of



pension. Further direction has also been sought for payment of salary for the period 1st July 2019 to 31.01.2020.

4. The crux of the issue involved in the present writ petition is that the petitioner was appointed as Peon in the Social Welfare Department, Bihar, Patna on 07.04.1978. While he was in service, he passed Secondary Examination, from Bihar School Examiantion Board by securing Second Division. Considering his satisfactory service and qualification, he was promoted to the post of the Lower Division Clerk by the competent authority in the year 2014 and after working at different places ultimately he superannuated on 31.01.2020.

5. Learned senior counsel appearing on behalf of the petitioner contended that after completing unblemished service for more than 41 years, the petitioner has been allowed to retire on 31.01.2020. However, despite lapse of more than two years when the petitioner has not been paid his admissible retiral dues, he was compelled to approach before this Court by filing the present writ petition.

6. A counter affidavit has been filed on behalf of respondent no. 6. Mr. Singh, learned counsel appearing on behalf of the State by referring to the statements made in the counter affidavit submits that, in fact, during the service period, the



petitioner remained unauthorizedly absent for certain periods and considering his misconduct and negligence in duty, show-cause has been asked and later on when the petitioner could not mend his behaviour, his service was returned to the office of District Welfare Officer, Munger by posting him, as a clerk. He further submits that during the course of settlement of the retiral benefit of the petitioner, the official respondents came to know with regard to certain tampering and manipulation in the original date of birth recorded in the service book of the petitioner and after having some doubt over actual date of birth of the petitioner and in view of the necessity to verify the same, vide letter no. 985 dated 24.08.2019 and subsequently letter no.1124 dated 23.09.2019, the petitioner was asked to furnish educational certificate relating to his age submitted at the time of appointment but despite repeated information, the same is yet to be made available from his end.

7. Mr Singh further drawn the attention of this Court towards the photo copy of the service book and submits that the from the service book it appears that the original date of birth has been changed to 09.01.1960 from 09.11.1950 with oblique reason and, as such, the respondent authorities were justified in directing the petitioner to furnish his educational qualification certificates on the basis of which the petitioner secured his appointment. He



further submits that the respondent District Welfare Officer vide letter no. 1207 dated 23.08.2021 has called for details from the office of Deputy Director, Welfare, Bhagalpur Division with regard to verification and veracity of the appointment letter of the petitioner, but the said authority has informed that the appointment letter of the petitioner issued vide memo no. 300 dated 03.04.1978 is not mentioned/ recorded in the issue register maintained in his office.

8. Having heard the learned counsel for the parties and also perused the materials available on record. So far the stand taken by the respondent State with regard to the unauthorised absence of the petitioner is concerned, prima facie, from the materials available on record, it is admitted fact that at no point of time any proceeding has been initiated with regard to the unauthorised absence of the petitioner. Had it been the petitioner unauthorizedly absent, he would not only serve with the notice, rather a departmental proceeding is required to be conducted with regard to the misconduct of the petitioner and the same is required to be proved in the said departmental proceeding, but the same has not been done and now the petitioner is already superannuated. So far the alleged interpolation in the service book of the petitioner, with regard to the date of birth is concerned, it is also the fact that



before retirement of the petitioner, time to time the petitioner was given different pay scales and promotion on the post of Clerk, but at no point of time any objection has been raised with regard to the alleged manipulation in the date of birth of the petitioner. The matriculation certificate and other unimpeachable documents have also been brought on record by filing the present writ application and if the respondent authorities were serious about the matter, the same could have been verified till date, but from the averments made in the counter affidavit there is no whisper that the educational qualification certificate does not tally with the date of birth mentioned in the service book.

9. Now the question for consideration before this Court as to whether the State authorities are empowered to initiate an enquiry after the retirement of an employee with regard to the actual date of birth inserted in the service book at the inception.

10. It is needless to say that this is not the case of the respondent that the petitioner has made manipulation in the service book, as the petitioner was/is not the custodian, rather it is the respondent authorities, who were/are the custodian of the service book. Further, prior to the retirement of the petitioner, there has never been any complaint with regard to the change of the date of birth and furthermore any decision to withhold the retiral benefit



by taking a unilateral decision without following the due process of law is not at all sustainable in any view of the matter.

11. The learned Division Bench of this Court in the case of **Bihar State Credit and Investment Corporation Ltd. and Ors. Vs. Rajendra Singh**, reported in **2011(2) PLJR 1047** considering the identical matter has been pleased to hold that “retiral benefit cannot be withheld only on the ground that a dispute arisen with regard to date of birth specifically when employee served for 30 years in the said institution/organization.”

12. In view of the aforesaid settled proposition and the materials available on record, this Court directs the respondent authorities to ensure the payment of retiral benefits on the basis of date of birth mentioned in the service book and also to ensure payment of salary for the period 1st July 2019 to 31.01.2020, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

13. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2022
Transmission Date	NA

