

**Civil Writ Jurisdiction Case No.9718 of 2019**

Kailash Kumar Chaudhary Son of Late Satyadeo Chaudhary R/o Village and P.O.-Bharat Khand, P.S.-Parbatta, District-Khagaria, Presently working as Key Man-cum-Chaukidar, Office of Junior Engineer, Public Health Section, Laxmipur, District-Jamui

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary Public Health and Engineering Department, Government of Bihar, Patna
3. The Engineer-in-Chief-cum-Special Secretary Public Health and Engineering Department, Government of Bihar, Patna
4. The Superintending Engineer Public Health Engineering Circle, Munger, District-Munger
5. The Executive Engineer Public Health Engineering Division, Jamui, District-Jamui

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. S.B.K. Manglam, Adv  
For the Respondent/s : Mr. U.P. Singh, AC to SC-4

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL ORDER**

10 01-11-2022

There is a dispute in the present writ application

about whether the petitioner's date of birth is 07.08.1959 or 07.08.1969. The case of the petitioner is that he was born on 07.08.1969 and, therefore, he has many more years left to serve in the State Service.

2. The respondents, on the other hand, have referred to various documents, including the report of the three men committee, pursuant to which the petitioner was absorbed/regularised in service. The specific stand of the State



is that it was because of petitioner's due seniority in the panel from which regularisation/absorption was being done that he has been regularised/absorbed in Government Service. This seniority position is founded on the petitioner's date of birth being 07.08.1959.

3. Having availed the benefit of regularisation on the basis of said date, the petitioner cannot claim to serve for any period in excess or by treating any other date of birth as being the basis of his retirement.

4. Under such circumstances, he has been proceeded against by charge-memo dated 25.09.2019. The asserted case of the respondent is that the petitioner was born on 07.08.1959 as the benefit of regularisation has been based on such date of birth. Facts being so the petitioner was due to retire in August 2019.

5. Under these circumstances, learned counsel for the petitioner submits that even if the petitioner accepts the date of birth as 1959, then he cannot be visited with any penal consequences for claiming the said date of birth by way of a termination order based on a charge-memo dated 25.09.2019, i.e., after his date of superannuation which would be on 31.08.2019.



6. Since the petitioner's date of superannuation as per their case is 31.08.2019, this Court would find that they could not have proceeded against the petitioner on the basis of a charge-memo thereafter on 25.09.2019, let alone visit the petitioner with order of termination which is dated 05.11.2019, i.e., three months after his superannuation.

7. The learned State counsel submits that the order has been passed after due opportunity after framing of charges and, therefore, this Court should not interfere with the same.

8. This Court would find that as per the case of the respondents, the petitioner has already retired in August, 2019 itself. Therefore, proceeding against the petitioner and terminating him after the master servant-relation had snapped, is impermissible in the eyes of laws. The order of termination, therefore, is clearly unsustainable. The same is hereby set aside.

9. The writ application is allowed to the aforesaid extent.

**(Madhuresh Prasad, J)**

SUMIT/-

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