

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15731 of 2014

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Awadh Kishore Mishra S/o Late Harish Chandra Mishra resident of village -
Malkunia, P.S. Dhaka, P.O. Pachpakri, District - East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Water Resource Department, Government of Bihar,
Patna.
3. District Magistrate, East Champaran at Motihari.
4. Chief Engineer, Water Resources Department, Balmikinagar.
5. Executive Engineer, Dhaka Canal Re-Modeling Division, East Champaran.
6. Executive Engineer, Water Resources Department Research Motihari,
District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Mishra, Adv. with Mr. Sanjiv Jaiswal, Adv.
For the Respondent/s	:	Mr. Kinkar Kumar, Ac to SC-9

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

3 03-01-2023

1. Heard the parties.

2. The petitioner by way of this writ petition has challenged the order dated 04.06.2013, whereby the Chief Engineer has decided to get the age determination done afresh of the petitioner as there is a mark difference between the age assessed in the first medical board and the second medical board. While the first medical board had assessed the age of the petitioner as 55 years, as in 2013, the second medical board constituted in terms of directions issued by this court, assessed age of the petitioner as 46 years.



3. Learned counsel for the petitioner submits that since the second medical board was constituted in terms of the directions issued by this Court, the assessment made by second medical board should be treated as final and petitioner's age should be assessed as 46 years for the purpose of his services. Learned counsel submits that in case of Madanlal Das re-determination of age was 52 years from earlier age 57 years. He submits that there is no occasion for Chief Engineer to direct for fresh medical examination.

4. Per contra, learned counsel appearing for the respondents has pointed out that the re-determined age has not been accepted by the Chief Engineer and the directions for getting fresh assessment done cannot be objected to, as there are two different ages assessed and there is marked difference between the two age determination done by two different medical boards. The Chief Engineer is the appointing authority of group-D Class-IV post and has therefore taken a decision, which does not warrant interference. Learned counsel has also taken this Court to the counter affidavit to point out that the members of the medical board have while re-determining the age also mentioned that *"there is no scientific basis to determine the exact age of a person beyond 40 years and the*



age determination is on the basis of physical examination/appearance, which is a subjective assessment and in such cases exact age cannot be given.”

5. I have considered the submissions and reflected on the second medical report which is based on the physical examination and appearance. The report itself states that exact age cannot be given and in such circumstances, decision taken by the Chief Engineer for getting a fresh age re-determined by a special technical institute of higher category cannot be questioned as unjustified. No interference is therefore warranted in the order dated 04.06.2013.

6. It is noticed that almost 10 years have passed by since the order was passed by the Chief Engineer. However, there is no stay passed by this Court. In the circumstances, if the age has not been re-determined, it is directed that the respondents shall conduct an ossification test and other relevant test at the AIIMS, Patna and submit its age assessment report. The report given by such institute shall be treated as final for the purpose of assessment of the age of the petitioner and for his service record.

7. The writ petition is disposed of in aforesaid terms.

8. It is made clear that if the petitioner has been



retired on the basis of the first age determination, the same will not come in way of the petitioner for being re-examined relating to his age determination as above.

(Sanjeev Prakash Sharma, J)

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