

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.227 of 2021

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Shiv Kumar Ojha, S/o Late Raj Narayan Ojha R/o Village- Dumri, P.s.-
Manjhi, District- Saran

... .. Petitioner/s

Versus

1. The High Court of Judicature at Patna through its Registrar General, Patna High Court, Patna
2. The Section Officer, AD(General), Patna High Court, Patna
3. Joint Registrar (J) cum PIO, Patna High Court, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Siddhartha Prasad, Advocate Mr.Om Prakash Kumar, Advocate
For the Respondent/s	:	Mr.Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 09-09-2024 1. The petitioner has challenged the order of compelling retirement on the basis of a letter issued by the Registrar General, High Court of Judicature at Patna, holding, *inter alia*, that the petitioner was to retire after completion of a long 44 years of service on attainment of his age of 60 years.

2. It is the case of the petitioner that in 1982, he was appointed as a Daily Wage Majdoor in the High Court of Judicature at Patna. By a notification, dated 17th of January, 1987, some posts of Driver in the High Court was created. Petitioner was selected as a Driver by the High Court Administration and on 1st of April, 1987, he joined as a permanent employee as Driver vide a Memo No.



3782A/accountant, dated 18th of May, 1987.

3. It appears to this Court that the petitioner has mentioned the date of notification and the date of joining incorrectly because the date of joining follows the date of notification. The date of joining cannot be followed by issuance of Memo No. 3782A/accountant, dated 18th of May, 1987. However, this issue does not come for consideration of the dispute in hand.

4. It is the case of the petitioner that in his service book and all other documents relating to his service, his date of birth was recorded as on 15th of September, 1967 as per school leaving certificate issued on 6th of January, 1979 by the Principal of Rajaykiye Medical School, Hatiya, Ranchi. On 31st of July, 2020, the Registrar General issued a retirement letter assuming that the petitioner joined his service on 3rd of July, 1976 and after completion of 44 years of service, he was to retire w.e.f. 31st of July, 2020.

5. It is contended on behalf of the petitioner that as per his date of birth record, the petitioner's service for 7 years more was left. The petitioner was prematurely made to retire.

6. The High Court authority/respondents herein have filed a counter affidavit as well as a supplementary counter



affidavit. It is learnt from the counter affidavit that previously in Patna High Court, the individual Judges or the Judges' Committee under the authority of the Hon'ble the Chief Justice of Patna High Court employed persons as Daily Wage Majdoor without following any norms of recruitment. The said Daily Wage Majdoors are involved in discharging menial works in the High Court at Patna. Many of such Daily Wage Majdoors did not have requisite birth certificates and even minimum qualification. This issue cropped up when some of the Daily Wage Majdoors who were subsequently made permanent in the establishment of the High Court attained right age presumably of retirement. Then the matter was placed before the Hon'ble The Chief Justice. It was decided by the Hon'ble the Chief Justice by an order dated 6th of March, 2014 as hereunder:-

“All class IV employees are called upon to produce the proof of their of birth either in the form of Birth Certificate or School Leaving / Transfer certificate. The details of such employees have been compiled. It is apparent that almost all class IV employees have obtained Birth Certificate from Patna Municipal Corporation in 2013. Obviously such proof of date of birth can not be accepted or relied upon.

The only valid document of proof of date of birth can be a certificate issued by the competent authority. Such document may be a Birth certificate / School Leaving / Transfer



certificate issued at the relevant time.

In absence of the valid proof of the date of birth, all Class IV employees were directed to medical examination by a Medical Board. The Medical Board also appears to have issued a stereo type certificate in all cases referred to the Board. The opinion of the Medical Board is also not reliable. In absence of a valid proof of date of birth or any other evidence, such Class IV employees may be presumed to have entered in service at the age of 18 years and all those Class IV employees who have put in 42 years of service from the date of first entry in the High Court be retired from service.

The Class IV employees, who are seemingly over-aged be called upon to produce valid proof of date of their birth and if they fail to produce such proof such persons may be referred for Medical Examination.”

7. The respondents have also filed a supplementary counter affidavit along with certain documents to show that the petitioner was engaged as Daily Wage Majdoor as a stop gap measure since 1976.

8. The petitioner has filed a rejoinder against the said supplementary counter affidavit, stating, inter alia, that petitioner's attendance was not recorded in attendance register which has been produced by the respondents in their supplementary counter affidavit. Moreover, it is contended by the respondent authority that the petitioner joined as Daily Wage Majdoor in the High Court at Patna on 3rd of July, 1976, but the



High Court Administration produced the purported attendance register of the petitioner for the month May and June 1976 when admittedly the petitioner did not join his service.

9. Learned Advocate on behalf of the petitioner on the aforesaid factual background refers to a decision of the Hon'ble Supreme Court in the case of *Shankar Lal v. Hindustan Copper Ltd., & Ors* reported in *(2022) 6 SCC 211*.

10. The said report relates to a dispute of the date of birth for the purpose of making VRS operational. It is recorded in Paragraph No. 3 of the said report that the VRS was operational in the appellant's case with effect from 3-10-2002. Admittedly the date of birth in his service book was recorded as on 21-9-1949. The service book was opened in 1975. He joined the organisation in the year 1971 and the Form B reflects his date of birth as 21-9-1945. The appellant claimed that at the time of his voluntary retirement, he came to learn for the first time that his date of birth was being changed to 21-9-1945. He invoked the writ jurisdiction of the High Court in the year 2008 as his representations for adhering to 21-9-1949 as his date of birth failed to evoke positive response from the employer.

11. Hon'ble Supreme Court finally in paragraph nos. 27, 28, 29 and 30 held as hereunder:-



27. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book recordal was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e. 21-9-1949 was the birthdate of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice.

28. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal.

29. The very reasoning on which an employee is not permitted to raise age-correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to



be permitted to fall back on the Form B which would curtail the VRS benefit of the appellant.

30. The principle of estoppel cannot be invoked in this case against the appellant to debar him from claiming the benefit properly computed as per his age reflected in the official documents. Occasion did not arise for the appellant to advert to the age-correcting process so far as entry in the Form B is concerned as the employer themselves had treated his date of birth to be 21-9-1949 in the service book.”

12. It is not in dispute that the petitioner was appointed as a Driver on 1st of April, 1987. In the service book, the date of birth of the petitioner was recorded as 15th of September, 1967. The said date of birth was accepted by the authority on the basis of a school leaving certificate issued in the year 1979 i.e., long before his joining in the post of Driver.

13. It is the case of the petitioner that he joined as Daily Wage Majdoor in 1982. Even if 1982 is held to be the date of joining of the petitioner as Daily Wage Majdoor, he at the relevant point of time was aged about 15 years and a person cannot work as a Daily Wage Majdoor at the age of 15 years. It is presumed when he joined a Daily Wage Majdoor, his date of birth was considered.

14. However, this Court is not in a position to accept that a boy of 15 years was allowed by the High Court



Administration to work as Daily Wage Majdoor. Again if this Court holds that he worked as a Daily Wage Majdoor since July 1976, it will have to hold that the High Court Administration engaged the petitioner as Daily Wage Majdoor at the age of 9 years. Both these assumptions or presumptions cannot be validly accepted by this Court.

15. Without going to decide the disputed question of fact with regard to the date of birth of the petitioner and the date of his joining as Daily Wage Majdoor, this Court finds that both the cases of the petitioner as well as respondents cannot be held to be acceptable.

16. In such circumstances, this Court is not in a position to rely on the date of birth certificate of the petitioner. The petitioner is, therefore, directed to appear in medical examination test, to be conducted by a Committee, constituted by the Medical Superintendent-cum-Vice Principal (MSVP) of PMCH, consisting of the Head of Departments of the Forensic Science, Orthopedic Surgeon and General Medicine and ascertain the present age of the petitioner on the basis of ossification and other medical and scientific examination and submit a report within 3 weeks from the date of this order.

17. The learned Registrar General, Patna High Court



is directed to send the copy of the order and take necessary steps for constitution of Committee by the concerned authority of PMCH, examination of the petitioner and submission of report within 3 weeks from the date of this order.

18. The learned Registrar General is also directed to inform the date of medical examination which will be communicated by PMCH Authority to the petitioner in writing so that he may appear before the Board on the date of examination.

19. If the petitioner is found to be aged less than 60 years, the order of retirement issued against the petitioner shall be cancelled and he will be permitted to join with all consequential benefits.

20. It is made clear that the issue of directing the employees having 44 years of completed service to retire has not been decided in the instant case on merit.

21. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

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