

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13933 of 2024

Rani Devi Wife of Late Mahendra Ram Resident of Muhalla- Mansha Pandey Bagh, P.O. Arrah, P.S.- Arrah Town, District- Bhojpur, Bihar, Pin code 802301, at presently Posted as Sweeper, Ward No-22, Arrah Municipal Corporation, Arrah, Dist- Arrah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Principal Secretary, Department of Urban Development, Government of Bihar, Vikash Bhawan, Patna, Bihar, Pin Code -800001.
2. The Municipal Commissioner, Arrah Municipal Corporation, Arrah, Near Old Police Line, Arrah Distriert -Bhojpur, Bihar 802301
3. The Executive Officer, Ward No.-22 Arrah Municipal Corporation, Arrah,, Near Old Police Line Arrah -Bhojpur Bihar-802301

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rohit Mishra, Advocate
For the Respondent/s	:	Mr. Ravi Kumar, AC to GP 13
		Mr. Akshay Lal Prasad, AC to GP 13

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 12-09-2024

Heard Mr. Rohit Mishra, learned counsel appearing on behalf of the petitioner and Mr. Ravi Kumar and Mr. Akshay Lal Prasad, learned Acs to GP 13 for the State.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

(I) For quashing/setting aside the order dated 22.08.2024 (Annexure P-4/1) issued under the signature of the Town Commissioner Arrah, Municipal Corporation Arrah vide memo no.1615, whereby and whereunder respondent no.2 has communicated to the petitioner that, "as per the date of brith entered into the service book she (the petitioner) would superannuate with effect from 31.08.2024 in the afternoon.

(ii) For directing the concerned respondent to make correction in the service book of the petitioner in respect of her date of birth, as per the voter identity



card/her aadhar card.

(iii) For directing the concerned respondent to allow the petitioner to continue to work on her post/be reinstated on the post she was working.

(iv) For any other relief/reliefs, for which the petitioner is found entitled in the given facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submitted that petitioner's husband had died in harness in the year 2010 and she had applied to be considered for appointment on Class IV post on compassionate ground. The Compassionate Appointment Committee recommended the name of the petitioner and the petitioner was issued appointment letter contained in Memo No.1399 dated 05.05.2011 and she was directed to furnish her age certificate within 15 days. The authorities after accepting the date of birth of the petitioner and being satisfied had accepted the joining and thereafter the petitioner in accordance with the said appointment letter, had also satisfactorily submitted the literacy certificate within two years and the services of the petitioner, thus, became permanent. Learned counsel further clarified that at the time of her joining, the petitioner had furnished voter identity card, duly issued by the Election Commission of India, in which, her date of birth has been mentioned as 25 years. The age of the petitioner was determined taking into account her age on 01.01.1995 and the identity card was issued on 25.03.1995.



Learned counsel further submitted that the authorities just to harass the petitioner, without going into the Voter ID card containing age of the petitioner, they on their own have assumed the date of birth of the petitioner to be 09.08.1964 and *vide* impugned communication contained in Memo No.1615, dated 22.08.2024, the petitioner has been made to retire on 31.08.2024 assuming to have attained 60 years of age of superannuation. In these backgrounds, learned counsel submitted that since the action of the respondents being arbitrary, *mala fide* and against the provision of Articles 14 and 16 of the Constitution of India, the petitioner has been forced to file present writ petition.

4. No one has appeared on behalf of the Ara Municipal Corporation. However, Mr. Ravi Kumar, has tendered his appearance on behalf of the State and has submitted that the age as contained in voter identity card, duly issued by the Election Commission of India cannot be taken to be valid age in accordance with law. The petitioner is required to submit the date of birth in accordance with the provision of law.

5. In these backgrounds, he submitted that in case of illiterate person, the age has to be determined by a Medical Board or in alternative, on the basis of the certificate with regard



to date of birth, issued by the Statistical Department, Government of India or by the Municipality. The same has not been furnished or brought on record. However, the petitioner has admitted in paragraph no.9 that the age of the petitioner was determined by the Medical Board duly constituted at the time of appointment to determine the age of the petitioner.

6. Heard the parties.

7. The Apex Court in the case of **Babloo Pasi v. State of Jharkhand and Anr.**, reported in **(2008) 13 SCC 133**, has held in paragraph no.22, therein which is reproduced hereinafter:-

“22. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”

8. Having considered the rival submissions made on behalf of the parties, I find that the petitioner has made out a case to be interfered, considering the fact that the communication contained in Memo No.1615 dated 22.08.2024 don't refer any information as to on what basis, the Town Commissioner, Municipal Corporation, Arrah has taken into account the date of birth of the petitioner to be 09.08.1964 in



absence of any certificate mentioned therein rather the petitioner has at least brought on record voter identity card, duly issued by the Election Commission of India and the same has legal validity, wherein her date of birth as on 01.01.1995 has been mentioned to be 25 years. The petitioner has also admitted in paragraph no.9 that at the time of her appointment, the Medical Board was duly constituted and had also determined her age and without taking note of the same, the date of birth mentioned in the communication dated 22.08.2024 cannot be sustained. In such circumstances, I direct the respondent no.2, the Municipal Commissioner, Arrah Municipal Corporation to give proper opportunity to the petitioner to place her case, so that she may not suffer the consequences of communication contained in Memo No.1615 dated 22.08.2024, being arbitrary and not in accordance with law and, as such, I find that the same cannot be sustained and is hereby set aside.

9. The petitioner, if so advise, may file her representation, giving the details and the respondent no.2 is directed to provide the copy of the Medical Board in case the Medical Board has determined the age of the petitioner 09.08.1996 or in alternative, if the Medical Board has assessed age of the petitioner on the date of appointment to be any other



date and from which date the petitioner has not attained the age of superannuation then in that case the petitioner must be allowed to perform her duty and all the salary and other consequential benefits are also required to be given to the petitioner for the interregnum period the respondent no.2, finally decides.

10.The writ petition is, accordingly, disposed of.

11. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2024
Transmission Date	NA

