

**Dost Mohammad Vs. Bihar State Electricity Board and ors.**

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**Court :** Patna

**Decided On :** Jun-24-1998

**Judge :** S.N. Mishra, J.

**Appeal No. :** C.W.J.C. No. 9041 of 1998

**Appellant :** Dost Mohammad

**Respondent :** Bihar State Electricity Board and ors.

**Disposition :** Application Allowed

**Prior history :** S.N. Mishra, J. 1. After having heard the learned Counsel for the parties, this writ application is being disposed of at the admission stage itself. The only dispute in this writ application is as to whether the petitioner is entitled to the salary for the period from 30.9.94 to 2.4.96 when he was made to retire with effect from 30th September, 1994. In view of the disputed dates of birth mentioned in the service book, the respondent Electricity Board has acted upon the Medical Certificate pro

**Judgement :**

**S.N. Mishra, J.**

1. After having heard the learned Counsel for the parties, this writ application is being disposed of at the admission stage itself. The only dispute in this writ

application is as to whether the petitioner is entitled to the salary for the period from 30.9.94 to 2.4.96 when he was made to retire with effect from 30th September, 1994. In view of the disputed dates of birth mentioned in the service book, the respondent Electricity Board has acted upon the Medical Certificate produced by the petitioner on the basis of which his date of superannuation was determined as on 30th September, 1994. Admittedly, the petitioner was made to retire by order dated 2.4.96 as contained in Annexure-5 w.e.f. 30.9.94. The petitioner was allowed to work till 2.4.96 and, as such, the claim of the petitioner is that he is entitled to the salary for the period he has worked beyond the date of retirement. The question false for consideration in this writ application is as to whether in the facts and circumstances of the case, the petitioner is entitled to the salary for the period in question. In support of his submission learned Counsel for the petitioner has relied on a decision in the case of Radha Kishan v. Union of India and Ors. reported in 1997(2) PLJR 129 (SC), wherein it has been held that, in such a situation, the employee is entitled at least to the salary for the period he has been allowed to work beyond the period of superannuation. In opposition learned Counsel for the respondent has relied upon the Apex Court Judgment in the case of Kashi Ram v. Bihar State Electricity Board and Ors. reported in 1998(1) PLJR 829. I have gone through the decisions relied upon by the parties. In the case of Kashi Ram (supra), it has been held that in case where fraud has been committed by the employee in order to continue in service even beyond the date of superannuation, such employee is not entitled to the salary for the period beyond the date of his superannuation. In this case, there is no allegation that the petitioner has committed fraud in order to continue on his post even beyond his date of superannuation. As stated above, there are two different dates mentioned in the Service Book. According to the petitioner his date of birth is 17.8.38 which has been recorded in the Service Book. According to the Electricity Board, however, the date of birth of the petitioner is 1934 as per the entry made in the Service Book on the basis of the Medical Certificate dated 24.9.68. It is, therefore, obvious that the respondent Electricity Board was aware of the disputed date of birth and even then the petitioner was allowed to work beyond the date of his retirement. If the petitioner has been allowed to work by his employer knowing the date of birth mentioned in his service book, even beyond the date of retirement, he

is entitled to, at least, the salary for the period he has worked beyond the date of his retirement. At least the said period shall not be counted for the purpose of payment, of retiral dues.

2. In this case, the petitioner was under the impression that according to the date of birth mentioned in the Service Book, he will retire in the year 1996, particularly when he was allowed to work by his employer till 1996, and rightly the respondent Board paid the salary to the petitioner for the period, in question, as well. It is said that though the salary had been paid for the period, in question, except for the months, yet the same is sought to be realised from the retiral dues legally payable to the petitioner. Taking into consideration the submissions and the law laid down in the aforesaid decision, I am of the view that in the facts and circumstances of the case, the petitioner is entitled to the salary for the period for which he has worked beyond the date of actual retirement and the same cannot be realised out of his retiral dues. In the result, the order dated 20.11.97 contained in Annexure-9 is hereby quashed. The writ application is accordingly allowed. The grievance of the petitioner is that still salary for two months is due which has not been paid as yet. If it is so the respondent Board is liable to pay the same and the respondent Electricity Board is accordingly directed to pay the salary as claimed within six weeks from the date of receipt/production of a copy of this order.

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