

Devi Dayal Giri Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jun-23-2006

Judge : Ramesh Kumar Datta, J.

Appeal No. : C.W.J.C. No. 12987 of 2003

Appellant : Devi Dayal Giri

Respondent : The State of Bihar and ors.

Advocate for Def. : S.C.I

Advocate for Pet/Ap. : S.P. Tewari, Adv.

Disposition : Petition allowed

Judgement :

Ramesh Kumar Datta, J.

1. Heard the learned Counsel for the petitioner and the learned Standing Counsel No. 1 for the State.

2. The petitioner is aggrieved by the Force Order No. 588/98 dated 8.9.98 communicated by Memo No. 493 dated 23.9.98 by which the date of birth recorded in his Service Book as 1.1.1948 has been changed to 15.2.1946 and accordingly he has been superannuated from service with effect from 14.2.2004.

The petitioner also seeks quashing of the Memo No. 3006 dated 1.10.2003 by which his representation for accepting his date of birth as 1.1.1948 has been rejected and for other consequential reliefs.

3. The facts of this case are that the petitioner was enrolled as Homeguard on 15.2.1965 and as per his statement his age as recorded in enrollment register as 19 years which is minimum statutory requirement as per Act and Rules.

4. The petitioner was confirmed and made regular by order dated 22.5.1966 and thereafter his Service Book was opened in which his date of birth was recorded as 1.1.1948. More than three decades later a show cause notice dated 27.6.1998 was served upon the petitioner asking him to explain as to why his age should not be treated as stated by him and recorded in the enrollment register and not (sic) wrongly recorded in his Service Book. After receipt of the petitioner's reply the same was rejected and the petitioner's date of birth was changed to 15.2.1946 instead of 1.1.1948 which was communicated to the petitioner by Divisional Order No. 19/98 as contained in Memo No. 493 dated 23.9.1998. Thereafter the petitioner filed his representation dated 11.5.2003 which has also been rejected.

5. Learned Counsel for the petitioner submitted that the authorities were aware of the fact that his date of birth in enrollment register as recorded as 19 years and even thereafter they continued to accept his date of birth as recorded in Service Book as 1.1.1948 and, thus, after more than 32 years they cannot be permitted to change the same even on the ground of fraud or misrepresentation. In support of his said contention learned Counsel relies upon the Division Bench Judgment of this Court in the case of Awadh Narain Singh v. The State of Bihar and Ors. 2002 (1) PLJR 567.

6. On a consideration of the said Judgment it is apparent that the facts therein were identical to the facts contained in the case of the present petitioner and the Division Bench was of the opinion that the misrepresentation made by the petitioner was known to the employer and no action was taken for a period of more than three decades and in that view of the matter in the fag end of the service, the employer cannot be allowed to change the date of birth of the employee on the ground that initial entry of date of birth was made in breach of qualification

regarding age, prescribed in the Rule. For the said reasons the Division Bench quashed the order of the authorities changing the date of birth of the petitioner in that case and superannuating (sic)

7. In view of the aforesaid decision which covers the facts and issues involved in the present matter the impugned orders dated 8.9.1998, 23.9.98 and 1.10.2003 are quashed and the authorities are directed to treat the date of birth of the petitioner as 1.1.1948 and reinstate him in service forthwith. However, taking into consideration the conduct of the petitioner for the period during which the petitioner has remained out of service he shall not be entitled to the salary. It is directed that he shall not be entitled to any salary since he has not worked during the period.

8. In the result this writ petition is allowed with the directions aforesaid. However, in the facts and circumstances of the case there shall be no order to cost.

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