

Guru Charan Prasad Vs. the Bihar State Co-operative Land Development Bank Society and ors.

Guru Charan Prasad Vs. the Bihar State Co-operative Land Development Bank Society and ors.

SooperKanoon Citation : sooperkanoon.com/135607

Court : Patna

Decided On : Sep-16-2002

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 7217 of 2002

Appellant : Guru Charan Prasad

Respondent : The Bihar State Co-operative Land Development Bank Society and ors.

Judgement :

Aftab Alam, J.

1. Heard Mr. Chittaranjan Sinha, learned-senior counsel appearing in support of the writ petition and Mr. Yugal Kishore, learned Counsel appearing for the respondents.

2. The petitioner worked as Senior field Officer in the Bihar State Co-operative Land Development Bank Society. He was superannuated from service with effect from 31.1.2002, taking his date of birth to be 27.1.1944. According to the petitioner, his date of birth is 27.1.1946 and on that basis he will attain the age of superannuation in January 2004.

3. The petitioner was appointed in the year 1973 and the controversy regarding his correct date of birth has arisen at a very late stage, at the time of his retirement, it appears that on 29.4.1999 the Bank issued a list of the employees who were due to retire in the year 2002. The name of the petitioner figured in this list at Serial No. 49 and his date of retirement was shown as 31.1.2002. According to the petitioner, he became aware of the fact that his name has been included in the list of employees due to retire in 2002, sometime in August, 2001. He then made a representation before the Administrator but as no favourable action was taken on his representation he finally came to this Court in the writ petition. As the controversy was raised at very belated stage at the first instance the claim of the petitioner would appear rather suspect and normally the controversy could have been concluded by production of his Service-book. But the Service-book of the petitioner seems to have been lost and is not available in the Bank. This Court adjourned the matter thrice to enable the counsel for the Bank to produce the Service-book of the petitioner but the Service-book could not be produced and finally an affidavit was filed, sworn by the Administrator, stating that the Service-book was lost and it was not being traceable. This Court then gave further adjournment to the Bank to bring on record any other document on the basis of which 27.1.1944 may be justifiably taken as the petitioners date of birth. The Bank has been unable to produce any other document as directed by the Court. Today when the case was called out, Mr. Yugal Kishore, Learned counsel appearing for the Bank submitted that in the gradation list issued in the year 1994 the petitioner's date of birth was shown as 27.1.1944. At that time he did not raise any objection. And then in the list issued on 29.4.1999 he was shown due to retire in the year 2002.

4. In respect of the latter document, the petitioner states that he came to know about it only in the year 2001. As records the gradation list of the year 1994, it may be noted that it was filed along with the counter-affidavit on 25.7.2002 but apparently not being satisfied on that basis alone, another Hon'ble. Judge of this Court earlier hearing this matter adjourned the case on 12.8.2002 and 5.9.2002 with the direction to the Bank to produce some other document in support of the petitioner's date of birth being 27.1.1944. As noted above, no such document has come from the Bank.

5. On the other hand, the petitioner appears to be on firm grounds, as claim finds support from the matriculation certificate. In the matriculation certificate, his date of birth, as claimed by him, is shown as 27.1.1946. In this regard, it may be noted that when this matter arose, and while the petitioner's representation was before the Administrator, he was asked to produce his matriculation certificate. It was then stated on behalf of the petitioner that his original matriculation certificate was misplaced and it was not possible for him to obtain the duplicate certificate because at that time a strike was going on in the office of the Secondary School Examination Board. He, therefore, requested the Administrator to have Hinsdale of birth verified from the Board at his own level. It appears that on an enquiry made by the Bank, the Secretary of the Board by his letter, dated 30.1.2002 (copy at Annexure-7) informed that the petitioner's date of birth was 27.1.1946. After the strike was over, the petitioner also obtained a duplicate copy of his matriculation certificate on 2.3.2002. In this certificate (copy at Annexure-12) his date of birth is shown as 27.1.1946.

6. There are two Division Bench decisions of this Court, one in *Dr. Captain Janardan Prasad v. The State of Bihar and Ors.* 1993 (1) PLJR 773 and the other in *Urmila v. The Union of India and Ors.* 2001 (3) PLJR 770 laying down that normally in a controversy regarding date of birth primacy is to be given to the date recorded in the matriculation certificate. In view of the aforesaid decisions and in view of the fact that the Service-book of the petitioner is no longer available, this Court is of the view that the best course would be to guided by the date of birth as recorded in the matriculation certificate.

7. At this stage, Mr. Yugal Kishore submitted that the letter from the Board (copy at Annexure-7) was issued at the time when there was strike and a duplicate copy was also obtained and produced by the petitioner himself. In other words, he suggested that the matter required some further verification. Having regard to the kind of cases, coming to this Court the submission made by the Mr. Yugal Kishore cannot be said to be totally unreasonable.

8. This writ petition is accordingly disposed of with a direction to the Administrator of the Bank to have the matriculation certificate produced by the petitioner duly

verified from the Board. In case the Board certifies that the certificate is correct and genuine then the date (27.1.1946) shown in the certificate would be taken as the petitioner's correct date of birth and that would form the basis for his superannuation. The Administrator should get the certificate duly verified from the Office of the Examination Board and take a final decision in the matter within two months from the date of receipt/production of a copy of this order. In case petitioner's date of birth is accepted as 27.1.1946, he will be deemed to have continued in service and shall be entitled to back wages and other allowances etc.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com