

State of Bihar and ors. Vs. Devendra Kumar Mishra

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Court : Patna

Decided On : Jan-12-2001

Judge : N. Pandey and I.P. Singh, JJ.

Appeal No. : L.P.A. No. 396 of 2000

Appellant : State of Bihar and ors.

Respondent : Devendra Kumar Mishra

Disposition : Appeal Allowed

Judgement :

1. This appeal has been preferred on behalf of the State of Bihar against the order dated 15-9-1999 in C.W.J.C. No. 9782 of 1998, whereby the writ petition was allowed with a direction to treat the date of birth of the respondent (writ petitioner) as 31st December, 1940.

2. In this case, there is a delay in filing the appeal, therefore, a petition under Section 5 of the Limitation Act was filed for condonation of the delay. Learned counsel appearing on behalf of the respondent vehemently opposed the Petition and contended that the appellants are required to show sufficient and good cause for condonation of each day's delay, failing which the appeal is fit to be dismissed as time, barred. In support of the contention, learned Counsel also relied upon a decision of this Court in the case of Bihar State Electricity Board, Patna, through its Chairman and Ors. v. Baxi S.R.P. Sinha, Advocate and Anr. 1999(1) P.L. J.R.

60 and yet another decision of the Supreme Court in the case of State of Haryana v. Chandra Mani and Ors. : 2002(143)ELT249(SC) .

3. True, it is in order to get the delay condoned, it should be necessary for the appellant to show sufficient cause. But in view of the law laid down by the apex Court in the case of Collector, Land Acquisition, Anantnag and Anr. v. Most. Katiji and Ors. : (1987)ILLJ500SC a Court should always adopt liberal approach. 'Sufficient Cause' implied by the Legislature under the Limitation Act is adequately elastic to enable a Court to apply the law in a meaningful manner for the ends of justice, therefore, in a case it appears essential for the ends of justice to go to the merit of the case, it would be proper for a court to adopt liberal approach. We, therefore, keeping in mind this aspect of the matter and also the important question involved in this case are inclined to condon the delay.

4. Now turning to the merit of the case as would appear that the respondent was initially appointed as matriculate constable on 11th January, 1959 and later promoted up to the rank of Sub-Inspector of Police. The year of birth of respondent in the service book was recorded as 1940, hence on completing the service tenure he superannuated with effect from 1st July, 1998. On getting the letter of superannuation the respondent, however, made a representation for the correction of date of birth. In the representation, it was alleged that the respondent had signed the service book in good faith and in fact he had no knowledge prior to communication of the letter of retirement, regarding the entry about the year of birth in the service book. The representation of respondent was rejected on the ground that he had full knowledge about the year of birth as recorded in the service and no attempt or objection was ever made during whole of the service tenure for correction.

5. On behalf of the State, it was pointed out that the respondent being a literate person had signed the service book, therefore, had full knowledge about the year of birth as recorded therein. That apart even at the time of P.T.C. examination or promotions to the rank of A.S.I. and S.I. no such grievance was made.

6. In the counter-affidavit, it was further pointed out that in view of the Provisions of Rule 97 (1) of the Bihar Financial Rules (hereinafter referred to as the 'Rules'), if a

Government servant is unable to state his exact date of birth, but can state the year or year and month of birth, the 1st July or the 16th of the month, respectively may be treated as the date of birth. Since in the service book of the respondent the year of birth was recorded as 1940 his retirement will take effect from 1st July. 1998.

7. The contention of the State was, however, rejected holding that having regard to the well settled views the benefit of such uncertainty must go in favour of the weaker side or the person who is going to be effected. Thus, in a case where only the year of birth is mentioned, the authorities will have no option but to treat the last date of the year, i.e. 31st December, as the date of birth. Having regard to such a view Rule 97 (1) of the Rules as pointed out above was held to be irrational and, therefore, should not sustain. '

8. In the back-drop of the facts noticed above, solitary question thus emerges whether in a case where only the year of birth has been mentioned in the service book, the date of retirement shall be the last date of the year, i.e. 31st December or 1st July. As per Rule 97 (1) of the Rules, it would appear, if a Government servant is unable to state his exact date of birth and only states the year, or year and month of birth, 1st July or the 16th of the month respectively be treated as his date of birth. A provision identical to the aforesaid was also available under Rule 233(iii) of the Board Misc. Rules, 1947 to the effect that in a case where the date of birth is not known and only the year is mentioned, 1st of July of the year shall be treated to be the date of birth.

9. It was pointed out on behalf of the State that exactly in a similar case where the year of birth of another Police Officer was mentioned as 1940 in the service book, a Bench of this Court in the case of Ambika Sharma v. The State of Bihar C.W.J.C. No. 10037 of 1998 by the judgment dated 31-3-1999 after considering the relevant provisions of Rule 233(iii) of the Board Misc. Rules held that 30th June of the year will be treated as his date of birth hence the date of superannuation as 1st July. Learned Advocates General therefore, contended that having regard to the views expressed above with respect to another Police Officer it was not proper for another Hon'ble Judge to take a different view declaring the

statutory rule irrational and thereby directing the Government to treat 31st of December as the date of superannuation.

10. In our view, there appears force in the submission made on behalf of the appellant. Undisputedly, another Court of a concurrent jurisdiction having examined identical provisions of the Board Misc. Rules with respect to another Police Officer had already held in clear terms that in a case where only the year of birth is mentioned 30th of June of the year should be treated the date of birth and, therefore, the date of retirement is to take effect with effect from 1st of July. In that case also year of birth of the Police Officer in the service book was mentioned as 1940 and, therefore, his date of retirement was treated as 1st July, 1998 so as in the present case.

11. Apart from what has been noticed above the Rule 233(iii) of the Board Misc. Rules and Rule 97 (1) of the Bihar Financial Rules are exactly identical. There is no dispute regarding the intention of the Legislature in prescribing such a provision and a mode to decide the dispute. Therefore, if as per provisions of statutory Rule, 1st of July is to be treated as date of retirement, it would not be proper for a Court of law to give a different meaning. True, it is, a statutory provision must be so construed, if possible, that absurdity and mischief can be avoided. In a case where the plain interpretation of the statutory provision produces absurd and unjust, which could never be the intention of the Legislature, the Court may modify the language so as to achieve the obvious intention of the legislature and produce rational construction. But, it would not be proper to make interpretation of the Rule in such a manner, which Legislatures had not intended. Therefore, keeping in mind thus aspect of the matter, in our view, there appears no justifiable reason to declare Rule 97 (1) of the Rules, irrational and unsustainable.

12. There is no doubt that in appropriate cases, where appreciating the dispute raised on behalf of the employees date of birth can be ascertained on the basis of the opinion of the Medical Board or evidence and documents, if produced at the proper time. Therefore, there are cases where this Court had no doubt to hold that end of the year should be treated as the date of birth.

13. In the instant case, the respondent before entering the service as matriculate, constable had already passed the matriculation examination. But inspects of that he got the year of birth recorded as 1940 instead of the actual date of birth and did not produce the matriculation certificate at that time or even throughout his service career. That apart even the order sheet of the Court of the writ petition would reveal that in spite of specific direction, the respondent did not produce the matriculation certificate in proof of his date of birth.

14. Apart from what has been noticed above the apex Court in catena of cases has held that application for alteration of recorded date of birth is to be made within a reasonable time if there is no statutory rule. The date of entry in any case should not be permitted to challenge by the Government servant at the fag end of his service. Reference in this regard can be usefully made to the case of State of T.N. v. T.V. Benugopalan 1996 (4) S.C.C. 302 and yet another decision in the case of Union of India v. C. Rama Swamy and Ors. : [1997]3SCR760 . In the case before us as noticed above the writ petitioner had entered the service in the year 1959 as a matriculate constable and no objection whatsoever was ever raised throughout his service career regarding this entry of date of birth as 1940. It was only when a communication was made about his retirement in the year 1998, he made representation. Therefore, this is also one of the reasons to reject his claim for correction of the date of birth.

15. On behalf of the respondent, writ petitioner a reference was however, made to an order of this Court in C.W.J.C. No. 6271 of 1998 wherein the order of transfer of the concerned employee recorded in the service book as 1940 was directed to be treated as 31-12-1940. It was pointed out that L.P.A. 261 of 2000 filed against that order was ultimately dismissed.

16. In our view, from a bare reference to the above orders either in the writ petition or the order passed in appeal, it would appear that no consideration was given nor any question was raised with regard to the criteria prescribed under Rule 97 (1) of the Bihar Financial Rules or the provisions of the Bihar Boards Miscellaneous Rules. That apart, we have already noticed that in appropriate cases, the Court to avoid undue hardship and injustice if any can disagree with the report of the

Medical Board or the decision of the Government. In the instant case, we have already notice that the writ petitioner although had passed the matriculation examination prior to entering in service as back as in the year 1959 but deliberately did not produce the matriculation certificate till whole of his service tenure. It has also been noticed that from a bare reference to the order-sheet of the writ petition, it would appear that sufficient indulgence was granted to the writ petitioner to produce the matriculation certificate. Therefore, this is also one of the reasons due to which the writ petition was fit to be dismissed.

17. In the result, for the reasons stated above, there is no option but to allow the appeal and quash the impugned order holding that the date of superannuation of the respondent shall be treated as 1st July, 1998. However, in the facts and circumstances of the case, there shall be no order as to costs.

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