
(2002) 05 JH CK 0021

Jharkhand High Court

Case No: Writ Petition (S) No. 538 of 2002

Kunj Bihari Mahto

APPELLANT

Vs

Bihar State Electricity
Board and Others

RESPONDENT

Date of Decision: May 8, 2002

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: P.K. Verma and Nivedita Kundu, for the Appellant; Ajit Kumar, for respondent Nos. 1 and 4 and Indrani Sen Choudhary, for respondent Nos. 2, 3 and 5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.

In this writ application the petitioner has prayed for quashing the Memo dated 16.6.1999 issued by the Electrical Superintending Engineer Deoghar (The respondent No. 2) as contained at Annexure-2 whereby and whereunder the petitioner was informed that as per the direction of the Secretary of the Bihar State Electricity Board made by letter dated 3.6.1999, the petitioner was directed to appear before the Medical Board for ascertaining his age. For that purpose, the petitioner was further directed to carry with him photographs etc.

2. The petitioner has also prayed for quashing the letter dated 9.12.1999 as contained at Annexure 2/1 issued by the Executive Engineer, Godda (respondent No. 3) directing the petitioner to present himself before the Medical Board at Patna on 18.12.1999 between 11.00 a.m. to 1.00 p.m. The petitioner has also made a prayer for quashing the report dated 3.2.2000 issued by the Medical Board of B.S.E.B. (respondent No. 4) as contained at Annexure 3 whereby and whereunder it was reported that the petitioner was 55-56 years (55 years) as on 3.2.2000 on the basis of a test conducted after forensic examination, orthopaedic examination and radiological examination including

observations of ossification changes in the bones and the joints.

3. According to the petitioner he was appointed in the services of the Bihar State Electricity Board and at the time of his appointment he was a Junior Lineman and his date of birth was entered in the Service Book showing it to be 17.3.1946. A photocopy of the relevant extract of the Service Book has been marked Annexure 1 to the Writ Petition. The petitioner has stated that as per the aforementioned entry made in the Service Book he would be reaching the age of 60 on 17.3.2006 and therefore he should be allowed to continue till that date i.e. 17.3.2006 and not upto 20.2.2005 as stated by the respondents in their counter affidavit at para 10 thereof.

4. The petitioner has complained that it was only in the year 1999 that the Board for the first time took a decision to compel some of its employees including the petitioner to go for medical examination for re-assessment of their age. Pursuant to the aforementioned decision, the Respondents issued the impugned Annexures-2 and 2/1 whereafter his date of birth was determined illegally by Annexure 3 by the Medical Board as "54-56 (55) years as on 3.2.2000".

5. According to the learned counsel for the petitioner, if this be accepted then it would mean a change in the age recorded in the Service Book and on the basis of such wrong assessment, the respondents cannot be allowed to fix his date of superannuation as 20.2.2005.

6. The learned Counsel for the petitioner states that the action of the Board is illegal, unconstitutional and arbitrary in as much as once the Board had entered the date of birth of the petitioner as 17.3.1946, they subsequently could not have changed that entry in the Service Book and that too all of a sudden after about 35 years from the date of his appointment.

7. The learned counsel has further stated that there are no interpolations in the Service Book and relying upon the relevant portion thereof at Annexure-1, he has argued that the same itself shows that there is absolutely no tampering and that the cutting made in the month portion is a mere clerical error because the same has been clarified immediately in the next lines IN WORDS.

8. A counter affidavit in the instant case has been filed by the respondent Nos. 2 to 5 (i.e. (2) The Electrical Superintending Engineer, Deoghar, Electric Circle, Deoghar; (3) The Electrical executive Engineer, Electric Supply Sub-division, Godda. Jharkhand; (4) The Medical Officer, Bihar state Electricity Board's Hospital. Patna and; (5) The Jharkhand State Electricity Board, Doranda, Ranchi. This counter-affidavit has been duly sworn by the Law Officer Jharkhand State Electricity Board, Ranchi. In this counter-affidavit, these respondents have stated that by reason of the impugned order the petitioner had been directed to appear before the Medical Board constituted by the erstwhile Bihar State Electricity Board and the assessment dated 3.2.2000 was also made by the Medical

Board of the BSEB vide Annexure 3. They have also stated that it had come to the notice of erstwhile BSEB that there were several discrepancies existing in the Service Books of the employees and therefore, the Board had decided to constitute a Committee to enquire into the same. While scrutinizing the Service Book of the petitioner, it was found that there was an overwriting/cutting in the date of birth column and as such it was decided to refer this case to Medical Board at Patna along with the cases of other persons also.

9. Pursuant to the aforementioned decision, the petitioners' age was determined by the said Medical Board by Annexure-3 and accordingly, his date of birth has been reckoned to be 3.2.1945 instead of 17.3.1946 and therefore, according to these respondents, as stated at Paragraph 10 of the Counter Affidavit, the petitioner would be superannuating with effect from 20.2.2005.

10. The learned counsel for the Board Mrs. Indrani Sen Choudhary has relied upon a Judgment passed by the Hon'ble Supreme Court in the case of G.M., B.C.C.L., West Bengal v. Shiv Kumar Dushad and Ors. reported in 2001 (1) JLJR 358 in support of the contention that the date of birth of an employee is equally important for the employer because the length of service put in the employee would become a factor for deciding the quantum of retiral benefits and therefore, while determining the dispute in such matters, the Courts should bear in mind that a change of the date of birth will upset the date recorded in the service records and therefore, it should not generally be accepted.

11. Reliance made by the learned counsel for the Board in the aforementioned Judgment is not acceptable because the facts of this case are totally and completely different. In the instant case the clinching evidence is the remark made in the age column of the Service Book. The existence of the said Service Book has not been denied. On the contrary, it has been stated at paragraph 7 of the said counter affidavit that the Committee found "overwriting and cutting in the date of birth column of his Service Book as such it was decided to refer the employees, whose case some doubts were raised/interpolation was found, to the Apex Medical Board at Patna."

12. The overwriting/cutting referred to in the counter affidavit shows that in the Service Book there is a cutting on the numerical portion reading 17.3.1946, but what is important is that immediately beside the same it is written "as per M.C." The letters M.C. obviously refers to Matriculation Certificate. There is no cutting on the number "17" nor is there any cutting or interpolation in the year "1946". The only cutting is in the month portion.

13. How can this change the year of birth and that too, when immediately on the next very line it is written in words "Seventeenth March one thousand nine hundred forty six." Just below this, the Executive Engineer. Godda has signed.

14. In that view of the matter the argument made by the respondents that there was interpolation/cutting cannot be accepted. It is true that an entry made in the Service Book cannot ordinarily be altered unless there are unimpeachable documents, but at the same

time the employer also does not have a unilateral power to suddenly refuse to honour a valid entry in the Service Book.

15. On account of such unimpeachable document brought on record by the petitioner and which has not been disputed or denied by the Respondents save and except what has been stated at Para 7 to the effect that the Committee found "overwriting and cutting in the date of birth column of his service book as such it was decided to refer the employees, whose case some doubts were raised/interpolation was found, to the apex Medical Board at Patna", it is held that such an observation is totally contrary to the contents of the Service Book. For the reasons stated above, the Service Book is held to be neat and clean and the date of birth recorded both in the numerical manner as also in words clearly point out that this is neither a case of disputed question of fact nor can it be said that there is any interpolation made in the Service Book. Moreover, the cutting in the month portion stands further explained and clarified in the date written in words appearing immediately below.

16. In that view of the matter the impugned action on the part of the respondents in sending the petitioner to the Medical Board and thereafter reassertaining his age on the basis of a determination made by the Medical Board does not appear to be reasonable at all, in so far as the petitioner is concerned.

17. The impugned Annexures 2, 2/1 & 3 are therefore quashed and it is ordered that the petitioner shall be entitled to continue in service strictly on the basis of his date of birth recorded in the Service Book i.e. 17.3.1946 with all consequential benefits.

18. The Writ Petition is accordingly allowed.