

**(2008) 09 JH CK 0030**

**Jharkhand High Court**

**Case No:** L.P.A. No. 100 of 1996 (R)

The State of Bihar (now  
Jharkhand) and Others

APPELLANT

Vs

Suleman Mian

RESPONDENT

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**Date of Decision:** Sept. 16, 2008

**Hon'ble Judges:** Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

**Bench:** Division Bench

**Advocate:** P. Modi, G.P. I, for the Appellant; JaI Prakash and P.K. Mukhopadhaya, for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

1. This appeal had been preferred by the erstwhile State of Bihar, now the State of Jharkhand, against the judgment and order dated 6.2.1996 by which the learned Single Judge had been pleased to allow the writ petition in favour of the writ petitioner-respondent herein and directed the appellant-State to pay the amount of salary for the period ranging from 1.7.1994 to 11.4.1998 which was the period during which the writ petitioner-respondent was treated to be in service on the ground that he was wrongly made to retire on 30.6.1994.

2. Relevant facts and circumstances giving rise to this appeal indicate that the respondent (petitioner before the learned Single Judge) filed a writ petition bearing CWJC No. 3116 of 1995(R) assailing the order dated 1.9.1995 by which the writ petitioner-respondent had been directed to refund the salary for the period of 16.6.1988 to 30.6.1994 on the ground that as per his date of birth which, according to the appellant-State, should have been 1930, he ought to have retired in the year 1988. The respondent-petitioner had also prayed for a direction upon the respondent-State, appellant herein, to correct his date of birth in the service book.

3. The learned Single Judge on scrutiny of the facts in regard to the date of birth noted that the respondent's date of birth although is stated to be 1930 as per the

version of the appellant-State, his date of birth recorded in the service book was 1936. But the learned Single Judge held that his date of birth in the service book was not fit to be relied as his date of birth in the gradation list was shown as 1940, meaning thereby that his service book where the respondent's date of birth was recorded as 1936 was not relied upon and the date of birth as shown in the gradation list as 1940 was taken to be his correct date of birth. But, it appears that the respondent in the meantime had retired from service as Class-IV servant, taking his date of birth to be 1936, as a result of which he retired on 30<sup>th</sup> June, 1994. However, the appellant-State initially insisted that the respondent's date of birth should have been 1930 and according to the averment of the appellant-State he should have retired before 1994 i.e. he should have retired in 1988 itself. On this averment, the appellant-State had issued an order against the respondent directing him to refund the salary which he had received for discharging the duties beyond 1988 i.e. upto 30<sup>th</sup> June, 1994. The learned Single Judge struck down this order of the appellant-State and held that he could not have been directed to retire in the year 1988 as his date of birth ought to have been taken to be 1940 as per the gradation list. In view of this finding recorded by the learned Single Judge, he was pleased to quash and set aside the order dated 1.9.1995 by which the respondent had been directed to refund the amount which he had drawn by way of salary from 1988 upto 30<sup>th</sup> June, 1994, during which he had duly discharged his duties.

4. Mr. P. Modi, learned G.P.I, appearing on behalf of the State has stated that insofar this part of the relief granted to the respondent is concerned, the appellant is not pressing this appeal. But as the learned Single Judge has held that the respondent had wrongly been retired on 30 June, 1994 and he had four more years to go if his date of birth had been taken to be 1940 due to which he could not have been retired prior to 1998, the appeal is fit to be pressed, since the learned Single Judge based on this premise granted further relief to the respondent and held that the respondent had been wrongly retired in the year 1994 as he could have retired only in the year 1998 and therefore he was entitled to the arrears of salary from the year 1994 to 1998, although he had not discharged duties during this period since he had erroneously been retired in the year 1994.

5. It is this part of the order, which is under challenge in this appeal, in support of which it was contended that although the learned Single Judge was right in holding that the respondent could not have been made to retire in 1988 by taking his date of birth to be 1930, the entry of his date of birth as 1936 which was recorded in the service book, could not have been ignored.

6. We find force in this part of the contention of learned Government Pleader No. 1, appearing in support of this appeal, as the learned Single Judge could not have entered into a scrutiny of the date of birth of the respondent as the entry made in the service book has to be treated to be the conclusive proof of the respondent's age. If the learned Single Judge thought it otherwise then, in our opinion, the matter

could have been referred to an Enquiry Committee or a Medical Board for assessment of the correct age of the respondent. As the respondent's age was duly recorded in the service book as 1936, the learned Single Judge had no reason to rely upon the date of birth recorded in the gradation list. The date of birth recorded in the gradation list could not have been treated as a conclusive proof of the age of the respondent, ignoring the entry made in the service book. The respondent being a IVth grade employee, the date of birth recorded in the service book at the time of entry into the service alone could have been relied upon by the learned Single Judge and hence the view taken by the learned Single Judge that he was wrongly retired on 30th June, 1994 has no reasonable basis and, therefore, the four years of service which had been allowed to be counted in favour of the respondent cannot be allowed to be sustained, so as to grant him salary for this period on the premise that he had wrongly been superannuated on 30<sup>th</sup> June, 1994.

7. For the reasons stated hereinbefore, the order of the learned Single Judge, insofar as the direction to pay him salary for a period of four years being 30<sup>th</sup> June, 1994 to 1998 cannot be allowed to be sustained as the respondent's date of birth could not have been taken from the gradation list, ignoring the service book in order to award benefit for the extended period of four years" of service during which he had not discharged any duty.

As already recorded hereinbefore, the aforesaid direction, therefore, stands quashed and set aside and the appeal, thus, is partly allowed. However, in the circumstance, there shall be no order as to costs.