

(2004) 08 JH CK 0060

Jharkhand High Court

Case No: Writ Petition (S) No. 3261 of 2004

Dhibu Mahto

APPELLANT

Vs

The Chairman, Jharkhand State
Electricity Board and Others

RESPONDENT

Date of Decision: Aug. 25, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 4 JCR 744

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Advocate: Nityanand Prasad Choudhary and P.C. Roy, for the Appellant; Ajit Kumar and D.K. Pathak, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.K. Merathia, J.

Heard the parties.

2. Petitioner has prayed for quashing the order dated 21.6.2004 (Annexure-5) issued by respondent No. 4 whereby his representation has been rejected and it is held that, petitioner will superannuate on 30.9.2004.

3. Petitioner's case is that his age recorded in the service book and other records was 28 years when, he joined in his service on 18.10.1977 and accordingly he will retire after completion of 60 years on 17.10.2009 but at the fag end of his service he was asked to appear before the Medical Board and accordingly he appeared on 11.9.1999 where the petitioner's age was assessed 54-56.(55 years) on 11.9.1999 and accordingly he has been made retire on 30.9.2004. In this way, he is made to retire five years before his actual date of retirement. It is further submitted that

petitioner's case is covered by the case of Permanand Singh v. Bihar State Electricity Board. reported in 2001 (2) SCC 191.

4. The stand of the respondents is that on receipt of information that the date of birth in the service book maintained by the Board is being .manipulated/ tampered/overwritten/erased at the behest of concerned workmen with mala fide intention to remain in the service beyond due date of retirement, B.S.E.B. constituted a committee to examine the service book in general and date of birth in particular vide office order dated 3.8.1995. About 50 Cases were found doubtful. The committee found that different dates were recorded in the service book. Accordingly, a notice dated 1.4.1999 was issued to petitioner for appearing before the Medical Board. Petitioner appeared before the Medical Board on 11.9.1999. In the Medical Board, the head of the departments of Forensic Medicines. Radiology and Orthopedics of Patna Medical College and Hospital were there including the Medical Officer of the Board. Medical Board assessed petitioner's age on 11.9.1999 to be 54-56 (55 years). Accordingly on 18.8.2000 this age was. endorsed in the service book. Accordingly, notice of superannuation dated 12.4.2003 was issued to the petitioner. This he challenged in WPS No. 2258 of 2004. The matter was remanded and thereafter the impugned order dated 21.6.2004 has been passed. According to the respondents, petitioner raised his grievance about I he said change of his date of birth in the service book after about 3 and 1/2 years. It is further submitted that in similar, circumstances, when the employee appeared before the Medical Board, this Court held that the decision of Medical Board will be binding on the employer as well as employee. Respondents relied on a judgment dated 16.4.1999 passed in CWJC No. 3419 of 1999 in the case of Ram Singh v, B.S.E.B.. (Annexure-C-A/5). It is lastly submitted that petitioner having not challenged the decision of the Medical Board, he cannot challenge the subsequent order passed by the respondents on the basis of the report of Medical Board.

5. I am not convinced with the submission of the respondents that petitioner raised the dispute after 3 and 1/2 years. There is nothing to show that petitioner was informed about the said endorsement changing his date of birth in the service book, prior to issuance of letter dated 12.4.2003 (Annexure-4). After receipt of the said letter, petitioner challenged the same in the year 2004 vide Annexure-1.

6. In the case of Ram Singh (supra), the case of the petitioner in that case was that his date of birth was recorded in the service book as 1.7.1948 but the Board without any cogent reason changed the same to 18.5.1939. To resolve this dispute of the age which was of about 9 years, petitioner of that case was asked to appear before the Medical Board where he appeared. In these circumstances, it was held that when the employee appeared before the Medical Board without any objection, the decision of Medical Board is binding on him. But in the present case, the said committee recommended for sending the petitioner to Medical Board for the following reasons :-

"40. Shri Dhiboo Matho-Skilled Khalasi-Trans. Sub-Division, Jamalpur.

His date of birth is recorded in the service book as 28 years and 27.12.1949. The date of appointment is 18.10.1977 and service book opened on 30.10.1978. If 28 years on 18.10.1977 is taken then his date of birth comes to 18.10.1949 and not 27.12.1949 as entered in the service book. Thus there is double entry of date of birth in the service book.

Hence, he should be referred to the Medical Board for determination of his age."

7. Service book is opened after joining of an employee. The date of birth/age mentioned in the service book will naturally relate back to the date of appointment. Petitioner's case is also that he was 28 years when he joined his service on 18.10.1977. Therefore, there was no occasion/reason for the committee to opine that if 28 years age is taken on the date of appointment, the date of birth comes to 18.10.1949 and not 27.12.1949 as entered in the service book. There was difference of about 2 months.

Further, when the committee recommended for sending several persons to Medical Board including the petitioner, there was no reason not to obey the said order by the petitioner, who was only a skilled khalasi. It is true that the difference between the age assessed by the Medical Board and the age mentioned in the service book is about 5 years but the reason for sending the petitioner to Medical Board was not that he has suppressed his actual age. Had the Board doubted the age recorded in the service book, the Board could have asked the petitioner to produce reliable document in support of his age failing which petitioner could have been sent to Medical Board for assessment of his age.

8. Learned counsel for the respondents tried to distinguish the case of Permanand Singh (supra). He submitted that it was held in that case that the employer at the end of service of an employee cannot accept the age as assessed by the Medical Board as conclusive proof and issue letter of superannuation without giving an opportunity of hearing to the employee, but in the present case, petitioner was given a notice to appear before the Medical Board as his date of birth was found doubtful and he appeared before the Medical Board without any objection. He further submitted that in the said case this Court also considered that the disputed gap was within two years which was within the range of assessment by Medical Board but in this case that gap is about five years.

9. In the facts and circumstances, noticed above, I have no option than to accept the petitioner's contention that his age was 28 years when he joined in service on 18.10.1977 and accordingly he will complete 60 years on 17.10.2009.

However, this order will not stand in the way of the respondents in taking any action in accordance with law if they feel that petitioner has suppressed his actual age.

With these observations and directions, this application is allowed.