

Baidyanath Prashad Sinha Vs State of Bihar and Others

Court: Patna High Court

Date of Decision: Sept. 8, 1982

Citation: (1982) 30 BLJR 490

Hon'ble Judges: S. Shamsul Hasan, J; Hari Lal Agrawal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S. Shamsul Hasan, J.

Annexures 4 and 6 have been impugned in this application which relate to a controversy regarding the age of the petitioner and his consequential retirement. The petitioner claims his date of birth to be 3-12-1930 on the basis of annexure-1 the matriculation

certificate. The Government has placed the date of birth as 3-12-1924 based on the entry in the service book.

2. The petitioner was appointed as a Constable on 21-1-19(sic) by the Superintendent of Police, Railway, Patna. The date of birth given at the

time of his appointment was 3-12-1924. It is not disputed that the petitioner has passed the matriculation in the year 1945 i.e. prior to his

appointment and his date of birth in the certificate is given as 3-12-1930. The genuineness of this certificate which is annexure-1 was inquired into

and is now not disputed. In the year 1975 by an order dated 6-6-1975 being D. O. No. 550 of 1975, the Superintendent of Police, Mawadah,

rectified the date of birth of the petitioner and changed it to 3rd December 1930 relying on the matriculation certificate. The Deputy Inspector

General, Administration, by his memo No. 2030 dated 26-6-1976 directed that since the Inspector General of Police, Bihar, is the only competent

authority to allow the correction of the date of birth, the rectification made by the S. P., Nawadah, vide annexure-2 was cancelled and it was

further directed that the previous date of birth which was already recorded in the service book will stand restored. When the petitioner came to

know of this change in 1981, since according to him no notice was issued to him when the order of the S. P. was rescinded, a representation was

filed which is annexure-3 to the petition seeking the restoration of the year of birth as recorded, in the matriculation certificate, This representation

was rejected. It may be stated that the petitioner did not avail of the opportunity provided by the Government to the government servants to get

their date of birth rectified since the S.P. had already effected the necessary correction.

3. The contention of the petitioner is that if his date of birth is 3-12-1930 the petitioner could not be retired as is proposed to be done by

annexure-6. It was also contended on behalf of the petitioner that having once fixed the age as 3-12-1930 it was not legal for the State to change

the date of birth without notice to this petitioner. It was also contended that having appointed the petitioner, even if the petitioner was under-age on

the basis of the age claimed by the petitioner, the State Government cannot now take the plea of improper appointment. It was contended that S.

P. had power to pass the order as contained in annexure-2. Lastly it was contended that the entry quoting the date as 1924 was not made by the

petitioner, and therefore, he could not be bound down by that entry.

4. On behalf of the State it was contended that S. P. had no power to rectify the age. It was also contended that having represented his date of

birth as being 3-12-1924 at the time of securing the appointment, it is not open to the petitioner to now assert that the date of birth has been

wrongly recorded and should be corrected in accordance with the matriculation certificate particularly in view of the position that, had the year of

birth, as now chimered been declared at the time of the appointment, the petitioner would not have secured his employment. Having once taken the

advantage of a date of birth the petitioner is now precluded from questioning its correctness in order to secure further advantage, The petitioner

was bound by his earlier assertion. Lastly the State contended that they are not assailing or challenging the validity of the initial appointment of the

petitioner. Their only submission is that the petitioner is bound by his earlier assertion.

5. As far as the question of power of S. P. to make an alteration is concerned, the matter has already been concluded by a Bench decision of this

Court in C.W.J.C. No. 4412 of 1978 dated 2-2-1979, in paragraph four of which it has been held that the S. P. is competent to correct the

Clerical errors. In this application, however, in view of what I propose to hold hereafter, further discussion on this question is not necessary. The

next contention of the petitioner is based on the maxim. ""Factum Valet Quod Fieri Non Debit"", that once having been appointed even if an

incorrect date of birth was given the petitioner is entitled to take advantage at this stage by seeking the correction of his age on the basis of his

matriculation certificate which has been regarded as a reliable and good proof of age of a person in Government service. I have already stated the

submission of the State which, in my view, is valid. The doctrine from which the petitioner seeks his support will apply only if the validity of his

initial appointment has become jeopardised by any action of the Government or if any action taken by the petitioner had been assailed on the

ground that his appointment is invalid. The State does not challenge the validity of his appointment and his proceedings on the footing that the age

given by the petitioner at the time of his appointment is the correct age and the petitioner is now precluded from making a different assertion after

obtaining the initial appointment. The submission of the State counsel is worthy of acceptance and that of the petitioner is entirely untenable. The

Supreme Court decision cited by the petitioner i. e. Gokaraju Rangaraju Vs. State of Andhra Pradesh, has no application to the factg of this case

because in that decision the action of a person incorrectly appointed was assailed and it was held to be unassailable. If the contention of the

learned Counsel for the petitioner is accepted and the change made by the S. P. upheld, a ludicrous situation will arise because in 1974 the

petitioner was under-age for appointment and he will now be endowed with a period of service of nearly 40 years which is well beyond the

average period of employment of Government servant.

6. Another aspect deserving notice is that the petitioner was already in possession of his matriculation certificate when he got the appointment.

There is no doubt that had he produced the matriculation certificate when he secured the employment he would not have succeeded. Having

obtained an advantage which was really not available the petitioner wants to obtain further benefit i.e. premature appointment and later retirement

and I have therefore, no hesitation in holding that the petitioner is bound by his assertion and cannot now take the plea of different date of birth to

the one which he had indicated at the time of his appointment

7. The learned Counsel for the petitioner has submitted that the entry regarding the year of birth in the service book was not made by him but by

some one else and, therefore, he is not bound by the same. This also does not appear to be tenable because the original service book contains the

signature of the petitioner and the petitioner was always aware of the entry. Undoubtedly he was required to give some year of birth when he was

appointed and unless he gave the year of birth which was earlier than 1930, he could not have got the appointment. Though it is not justified to

suggest that the entry of year of birth in the service book was not made by the petitioner, it may be that the entry was made by a person who was

filling up all the entries in the service book, but it cannot be asserted that the entry was without the knowledge of the petitioner because he was the

only person who was deriving benefit from it Lastly it was contended by the learned Counsel for the petitioner that the cancellation of the order of

S. P. was made without notice to the petitioner, and therefore, annexure-4 has to be struck down. Learned Counsel for the petitioner also relied

on a case of Sarjoo Prasad v. General Manager(2) in which Supreme Court has held that an order correcting the birth date of a retired employee

on that basis is liable to be set aside in view of the principle of natural justice. This decision cannot enure to advantage of the petitioner, firstly

because his case has already been considered in 1981 and secondly on the facts of this case an incorrect alteration was rectified and the original

age as given by the petitioner was restored. It cannot, therefore, be argued that the change in the date of birth was deserving of protection of the

rule of natural justice as it did not amount to an alteration as such, In my view there is no merit in the submission particularly when the petitioner did

file a representation in 1981 which was considered and rejected. It cannot be said that the petitioner's point of view was never considered by the

Government. Undoubtedly the order of the S.P. was under misconception and was obviously influenced by the matriculation certificate without

taking into consideration the other aspects of the matter relevant to the situation. I am also satisfied that since the petitioner already worked for

about 33 years no prejudice is being caused by issuance of annexure-6. The petitioner having concealed his year of birth at the time of entering into

service is now precluded from undoing his own perfidy to obtain an unjustified and illegal benefit.

8. In the result the application has no merit and accordingly dismissed but without costs.

Hari Lal Agrawal, J.

9. I agree.