

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1225 of 2017**

**In**

**Civil Writ Jurisdiction Case No.8999 of 2014**

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Bimal Chandra Jha, resident of House No. 314B/2, Neelkanth Colony,  
Opposite Azad Dairy, Indrapuri, Samanpura Road, Raja Bazar, Patna- 800  
014.

... .. Respondent No. 2/Appellant

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources  
Department, Government of Bihar, New Secretariat Building, Vikas  
Bhawan, Bailey Road, Patna.  
... .. Respondent No. 1/Respondent 1<sup>st</sup> Set
2. Shree Baidyanath Ayurved Bhawan Private Limited, Baidyanath Bhawan  
Lane, Chiraiyatand, Patna through its Manager- Lakshmi Kant Chaudhary,  
Son of Late Bindeshwari Prasad Chaudhary.

... .. Petitioner/Respondent 2<sup>nd</sup> Set

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**Appearance :**

For the Appellant : Mr. Lallan Kumar, Advocate  
For the State : Mr. Rohitab Das, Advocate  
For the Respondent No.2: Mr. Alok Kumar Sinha, Advocate  
Mr. Indrajeet Bhushan, Advocate  
Mr. Manish Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 22-03-2022**



Heard Mr. Lallan Kumar, the learned Advocate for the appellant and Mr. Alok Kumar Sinha, the learned counsel for the respondent 2<sup>nd</sup> set/Shree Baidyanath Ayurved Bhawan Private Ltd.

2. Mr. Rohitab Das, the learned counsel for the State is also present.

3. The judgment under challenge is dated 02.08.2017, passed in C.W.J.C. No. 8999 of 2014, whereby the Award dated 05.02.2014, passed by the Industrial Tribunal, Patna in Reference Case No. 36 of 2007, in favour of the appellant, has been set-aside.

4. The respondent 2<sup>nd</sup> set/Shree Baidyanath Ayurved Bhawan Private Ltd. had challenged the Award dated 05.02.2014, referred to above, on various grounds, the primary one being that the Reference in itself was bad as it was not an industrial dispute, but an individual dispute regarding the retirement age of the appellant herein.

5. Apart from that, it was urged on behalf of the respondent 2<sup>nd</sup> set before the writ Court that the



issue of change in the date of birth was raked up after about 34 years and immediately before the date of superannuation of the appellant. It was contended that the appellant could not have been treated as a workman under the Industrial Disputes Act, 1947 as he had been serving as a Law Officer for the organization and also edited a pictorial magazine taken out by the organization.

6. The learned single Judge has taken note of the facts that the appellant had given a declaration on 06.11.1970, while filing up his nomination form, about his date of birth being 05.01.1945. Shortly, before he was to become of the age of 60 years, he communicated on 09.01.2004 to the respondent that necessary changes be carried out in his date of birth and such claim was based on the copy of the Admit Card issued by the Bihar School Examination Board, Patna in which his date of birth was shown as 05.01.1951. But along with that communication, the appellant never supplied the Matriculation Certificate.

7. While the issue was being deliberated



upon by the Management, it was discovered that in the Gratuity Insurance Scheme documents, the date of birth of the appellant was recorded as 27.01.1947 instead of 05.01.1945, which was his earlier declaration. The learned single Judge could not ascertain whether it was inadvertent or was the result of collusion and connivance of the appellant for creating doubts about the first declaration of his age.

8. Be that as it may, taking the line of least resistance, the later declaration in the Gratuity papers of the appellant was accepted as his date of birth, giving him a premium of 2 years and he was made to superannuate by calculating the age of 60 years from 27.01.1947.

9. Not satisfied by this, the appellant went before the Industrial Tribunal, wherein the Reference was for adjudication whether the action of the Management in retiring him was justified in view of his date of birth being 05.01.1951 as shown in the Admit Card of the Bihar School Examination Board.



10. It is being reiterated that till date, the Matriculation Certificate has not been furnished by the appellant.

11. The learned single Judge appears to have gone into the entire gamut of evidence adduced on behalf of the appellant and came to the conclusion that the dispute which the Tribunal had adjudicated was not the industrial dispute in any sense of the term, but was an individual dispute. The reasons for the learned single Judge to hold that it was not an industrial dispute were that the appellant could not be called a workman as he was the editor of a pictorial magazine of the organization and that he had been discharging his responsibilities and functions of a Law Officer of the company/organization. It was found by the learned single Judge that this dispensation of the appellant was in the nature of managerial work and, therefore, it was absolutely wrong for the Tribunal to have held that the appellant was a workman. For this reason alone, the Reference was found to have been made on a wrong premise and,



therefore, any decision arrived at by the Tribunal was flawed. The learned single Judge has further held that for an industrial dispute, it has to be sponsored by the union.

12. The learned single Judge has rightly found that the Tribunal had wrongly relied upon the settlement dated 12.02.2007 between the management and five office bearers of the union to hold that the dispute regarding the date of birth of the appellant was an industrial dispute.

13. It was out an out an individual dispute as it never fulfilled the test laid down by the Supreme Court in ***The Bombay Union of Journalist and Ors. Vs. The Hindu, Bombay; AIR 1963 SC 318*** and in ***The Rajasthan State Road Transport Corporation and Anr. Vs. Krishna Kant; AIR 1995 SC 1715***. The test which is to be applied for determining whether an individual dispute has acquired the character of an industrial dispute is whether on the date of Reference, the dispute is taken up by the union of workmen or by



appreciable number of workmen of the employer against whom the dispute had been raised. The learned single Judge did not find ample evidence of any such appreciable number of workmen having sponsored or supported the Reference on 16.10.2007, when the Reference was actually made.

14. We are of the considered view that the nature of duty performed by the appellant could not have come within the category of an industrial workman. Apart from this, there is no reliable material worth the name to hold anything different with respect to the date of birth of the appellant when his first declaration, sometimes in the year 1970 was that his date of birth was in the year 1945. The Management appears to have taken a fairly reasonable/lenient view of the matter and has relied upon one of the documents in the Gratuity papers where the date of birth of the appellant has been shown to be of the year 1947. That the appellant has been made to retire after calculating his age from the year 1947, is good enough evidence for us to hold that



he was never put to any disadvantageous position.

15. We do not find any reason to differ with the findings and opinion of the learned single Judge, which, in fact, has taken into account all the arguments advanced on behalf of the parties and has come to the conclusion that the Reference in itself was absolutely flawed and that there were no materials whatsoever to justify shifting of the date of birth of the appellant.

16. The appeal has no merits and is, therefore, dismissed, but without any cost.

**(Ashutosh Kumar, J)**

**(Anjani Kumar Sharan, J)**

Praveen-II/-

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