

(2010) 09 AHC CK 0441

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 54080 of 2010

Madan Lal Arora

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 6, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Shukla, J.

Petitioner has approached this Court contending therein that he is entitled to function on the post of senior clerk till July 2011 and is also entitled to received his remuneration accordingly and has been wrongly superannuated on 28.02.2009.

2. Fact of the case as is reflected that petitioner has been performing and discharging his duties with U.P. State Road Transport Corporation. In the service book of the petitioner, accepted position is that date of birth has been recorded as 04.02.1951 and as per said entry which has been made petitioner has been superannuated on 28.02.2009. Petitioner has stated that he has passed his High School in the year 1970 and in the High School Certificate his date of birth has been recorded as 13.07.1953. Petitioner has stated that he has passed his High School after he had been offered appointment by the respondent-Corporation in the past and this fact has been accepted and as such as per said date of birth 13.07.1953 he should be superannuated as per High School certificate.

3. Claim made by petitioner cannot be accepted by any means. This is accepted position that at the point of time when petitioner has entered in the service petitioner has disclosed his date of birth as 04.02.1951 and same is recorded date of birth. Petitioner has accepted that at no point of time, during his entire continuance

of service petitioner ever requested for change in his date of birth as per High School certificate and when notice of superannuation has been given then said request has been made that his superannuation should be based on High school certificate. Petitioner has accepted that he has passed his High School after he entered into service. Petitioner's date of birth has been mentioned as 13.07.1953. If request of the petitioner is accepted that he has passed his High School after joining of service in the year 1970 then as per the said High School certificate petitioner was minor at the point of time when he entered into service, in such a situation and in this background it is writ apparent that deliberately in well calculated manner attempt has been made by petitioner to get date of superannuation extended which is not permissible under the law.

4. Law on the subject is well settled see [State of Gujarat and Others Vs. Vali Mohmed Dosabhai Sindhi](#), are being extracted below

9. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

10. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of [State of Assam and Another Vs. Daksha Prasad Deka and Others](#), this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure." In the case of [Government of Andhra Pradesh and Another Vs. M. Hayagreev Sarma](#), the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal

corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was inter alia observed by this Court:

5. View to the similar effect has been reiterated on 07.09.2010 in Civil Appeal No. 7415 of 2010, [State of Haryana Vs. Satish Kumar Mittal and Another,](#)

6. Consequently as per the judgment of Hon"ble Apex Court no relief can be accorded to the petitioner, as such writ petition as it has been framed and drawn is dismissed.