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**(2004) 09 AHC CK 0243**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 47519 of 2002

Chandra Pal Singh Yadav

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

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**Date of Decision:** Sept. 27, 2004

**Citation:** (2005) 2 UPLBEC 1468

**Hon'ble Judges:** Rakesh Tiwari, J

**Bench:** Single Bench

**Advocate:** R.K. Mishra and Sudhir Bharti, for the Appellant; C.S.C., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. The controversy involved in this writ petition is as to what is the correct date of birth of the petitioner.

3. According to the petitioner incorrect date of birth is recorded in his service book as 31.1.1943 though his correct date of birth is 13.9.1948.

4. He has filed this writ petition challenging the validity and correctness of the impugned order dated 3.8.2002 (Annexure 7 to the writ petition whereby he has been informed by respondent No. 4 that he would attain the age of superannuation on 31.1.2003 on the basis of his date of birth recorded in his service book as 31.1.1943.

5. Initially the petitioner was appointed in the Work charge establishment as a beldar on 31.1.1968. He was regularized on the post of Mate (a Class IV Post) w.e.f. 4.6.1974.

6. After being appointed as a Mate his service book was prepared in which his date of birth was entered as 31.1.1943. The petitioner had also signed on his service book and the Assistant Engineer, Ram Ganga Dam Division, Kalagarh attested the same.

7. It is submitted by the counsel for the petitioner that as soon as the petitioner came to know that a wrong date of birth has been entered in his service book the submitted a representation dated 28.1.1994 for correction of his date of birth as 13.9.1948.

8. In the counter affidavit it has been averred that no representation of the petitioner much less any representation as dated 28.1.1994 is available on the record and as it is vehemently denied that the petitioner has made any representation as alleged by him.

9. It appears from the record that the petitioner was directed by the Executive Engineer Drainage Khand 1<sup>st</sup>, Meerut to present himself before the Chief Medical Officer concerned for examination and for ascertaining age. The Chief Medical Officer, Bulandshahr examined the petitioner on 3.2.1994 and ascertained his age as 51 years. The Chief Medical Officer issued a certificate also verifying the age of the petitioner. Accordingly the petitioner was confirmed in service w.e.f 1.4.1992 vide order dated 1.1.1994.

10. It is further evident from the record that the petitioner submitted a copy of his school-leaving certificate issued by the Headmaster of Prathamik Vidyalaya Narichak Hillauli District Unnao on 12.1.2002 and that an application/representation dated 5.6.2002 was moved by the petitioner to the Executive Engineer (respondent No. 4) for entering his date of birth in his service book as 13.9.1948 which was rejected by the order dated 3.8.2002.

11. The petitioner submitted the school-leaving certificate to the department after 28 years of service when he was at the verge of retirement. He had signed his service book authenticating the entry in respect of his date of birth as 33.1.19943 and has retired from service on 31.1.2003. It is settled law that the date of birth recorded in the service book should be relied upon by the court for the purposes of superannuation of an employee. If there was any mistake in the date of birth entered into his service book the petitioner ought to have moved an application at the very initial stage when he had first signed his service book after the same was prepared or immediately when the mistake came to his knowledge. A perusal of the date of birth of the petitioner entered as 31.1.1943 in column No. 5 of the service book shows that he had signed the same on 19.11.1979 and had authenticated it. The entry in the service book is in Form No. 13 under the Fundamental Rule 74 and is appended as C.A. 1 to the counter affidavit. He had not moved any representation on 19.11.1979 or within a reasonable period thereof for correction of his date of birth. On the other hand he moved a representation on 5.6.2002 for correction of his date of birth when he was at the verge of retirement. The assertion of the petitioner that he moved the representation immediately on coming to know about his incorrect date of birth is falsified from the records.

12. The counsel for the petitioner has showed no illegality or infirmity in the impugned order retiring the petitioner on 31.1.2003 on attaining the age of superannuation of 60 years.

13. For the reasons stated above, the writ petition is dismissed. No order as to, costs.