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(1995) 05 AHC CK 0121

Allahabad High Court

Case No: C.M.W.P. No. 834 of 1990

Balwant Saini	APPELLANT
Vs	
District Judge and Another	RESPONDENT

Date of Decision: May 25, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 - Rule 56

Citation: (1995) 3 UPLBEC 1745

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: K. Ajit and K.K.S. Chouhan, for the Appellant;

Final Decision: Allowed

Judgement

S.P. Srivastava, J.
Feeling aggrieved by an order passed by the District Judge, Mainpuri, retiring the Petitioner from service in public interest exercising the Jurisdiction envisaged Under Rule 56 as amended, the Petitioner has approached this Court seeking redress praying for the quashing of the said order.

2. have heard Sri K. Ajit, learned Counsel of the Petitioner and the learned standing counsel representing the Respondents who was also produced the original service book of the Petitioner along with the medical report dated 11.5.1978 submitted by the Chief Medical Officer, Mainpuri in regard to the age of the Petitioner.

3. The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. The Petitioner had entered in service on 23rd September, 1966 having been appointed in a post falling in category IV. At the time of his entry into service, the

date 6th May, 1943 had been recorded in his service book as the date of his birth. This entry was duly endorsed by the District Judge, Mainpuri. However, it appears that the District Judge, Mainpuri called for a report from the Chief Medical Officer, Mainpuri in the year 1978 In regard to the real date of birth of the Petitioner. The Petitioner in response to the direction of the District Judge appeared before the Chief Medical Officer one 1th May, 1978. The Chief Medical Officer submitted a report on 11th May, 1978 wherein it was reported that taking into consideration the height of the Petitioner which was 160 centimeters, his body weight which was 65 kilograms, the number of teeth which was 9/10 and the colour of his hair which was 30% grey and the physical appearance, In the opinion of the Chief Medical Officer his age appeared to be 45 years.

4. It further appears that on the basis of the above report, the entry of the date of birth of the Petitioner which had been entered in the service book at the time of his entry Into service was deleted and substituted by the words Year 1933" indicating that it was being done according to the certificate of the Chief Medical Officer, Mainpuri dated 11.5.1978.

5. It further appears that on the basis of the aforesaid corrected entry of the Petitioner"s date of birth treating the Petitioner to be more than 55 years of age his case was referred to a screening committee which after considering the service record of the Petitioner recommended for his being compulsorily retired from service vide its report dated 10.8.1989. The District Judge, Mainpuri vide his order dated 17th October, 1989 accepted the recommendations of the screening committee and thereafter issued the impugned order compulsorily retiring the Petitioner from service.

6. The learned Counsel for the Petitioner has urged that the impugned order compulsorily retiring the Petitioner is clearly without Jurisdiction. The contention is that the Petitioner"s date of birth as originally entered In his service book could not have been altered in the manner done by the District Judge and if the original entry of the Petitioner"s date of birth had to be taken into account, in that event the Petitioner having not attained the age of 50 years either on 10th August, 1989 when the screening committee submitted its report or on 17.10.1989 when the said report was accepted or on October 27, 1989 when the impugned order had been passed, there could not arise any occasion to exercise the Jurisdiction envisaged under Fundamental Rule 56 as amended as the Petitioner could not be deemed to have attained the age of 50 years which was a condition precedent for exercising the Jurisdiction contemplated under the aforesaid provision. It has further been urged that since the Petitioner had not passed the High School examination of the U.P. Board of High School and Intermediate Education or any other equivalent examination, his date of birth recorded in his service book at the time of his entry into the Government service had to be deemed to be his correct date of birth for all purpose in relation to his service including premature retirement as contemplated under the provisions contained in the Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 and consequently even for determining the Petitioner"s having attained the age of 50 years for the purpose of exercising the Jurisdiction envisaged under Fundamental Rule 56 which could entitle the appointing authority to compulsorily retire the Petitioner from

service. The assertion is that in the circumstances of the present case, the correction made in the date of birth as recorded in the service book of the Petitioner in the year 1978 had to be treated as non-est and the appointing authority could not proceed on the basis of the altered date of birth of the Petitioner so as to exercise the Jurisdiction envisaged under Fundamental Rule 56 indicated hereinabove.

7. The learned standing counsel, however, has urged that the Petitioner had full knowledge of the alteration made in his date of birth as recorded in service book in the year 1978 and has In fact as a token of acknowledgement of such alteration appended his signatures on the service hook. It Is urged that the Petitioner never challenged the aforesaid alteration at all and cannot be permitted now at this belated stage to challenge the correctness of the altered date of birth as recorded in his service book In the year 1978. It has further been urged that taking into consideration the report of the screening corrfmittee which had noticed the facts indicating that the Petitioner had rendered himself a dead wood which deserved to be chopped off, there was absolutely no justification for interference by this Court in the Impugned order, while exercising the equitable jurisdiction Under Article 226 of the Constitution of India.

8. In its decision in the case of Adhishasl Abhlyanta Electricity Rihand and Hydel Civil Division U.P.S.E.B. Allahabad and Ors. v. Shitala Prasad and another, reported in 1993 All 325 rendered by a Division Bench, it was observed that there are well-known scientific methods to ascertain the age of a person and ossification of bones gives a fairly accurate idea regarding the age. It was observed that for this purpose X-ray examination has to be performed. In case the doctor had been asked to give his opinion regarding the age of the Petitioner, he would have performed necessary tests including X-ray examination, etc. and would have also given the scientific data on the basis of which he could have formed his opinion about the age. The doctor while giving an opinion about the age of a person acts as an expert and in the absence of necessary scientific data, his opinion would carry little weight in view of Section 45 of Evidence Act. In the circumstances, therefore, taking into consideration the ratio of the decision of the aforesaid case on the point, the report of the Chief Medical Officer dated 11.5.1978 could not be accepted as an expert opinion of the doctor regarding the age of the Petitioner. As a consequence, therefore, the said document could not be used for the purpose of determination of his age.

9. It may further be noticed that under the Government Order issued by the Stale Government dated 23rd August, 1965, In case there is any reason to doubt the accuracy of the date of birth as disclosed by a person entering into the service in the absence of any documentary evidence referred to in the aforesaid Government Order, the appointing authority was required to obtain the certificate from the civil surgeon of the district. The aforesaid Government Order also provided that the date of birth recorded in the service book which had been attested and stood unchallenged for a number of years, should be altered except In very exceptional circumstances.

10. In the present case, no such exceptional circumstance has been pointed out which could justify the alteration of the date of birth of the Petitioner as originally recorded In his service book, which was duly attested by the District Judge. The Government order permitted the recording of the date of birth on the basis of a medical certificate by the Civil Surgeon only at the time of making first entry in the service book. Taking Into consideration the provisions contained in the aforesaid Government Order and the Rules of 1974 referred to above, I am clearly of the view that the certificate of the Chief Medical Officer could not be used for changing the entry made at the initial stage. It is therefore, obvious that the alteration made in the recorded date of birth of the Petitioner in his service book changing it to year 1933 was not only Illegal but was also without any authority of law and was non-est as observed by the Division Bench in its aforesaid decision, such an entry could not be taken notice of and had to be ignored.

11. In the circumstances indicated hereinabove, it is apparent that the Petitioner could not have been deemed to have attained the age of 50 years on the date when the impugned order compulsorily retiring him from service exercising the jurisdiction envisaged under Fundamental Rule 56 as amended had been issued curtailing his tenure of service secured under the service rules. The Petitioner, according to his date of birth as recorded in his service book, would have attained the age of 50 years on 6.5.1993. The District Judge, therefore, could not be deemed to have beep vested with any authority to compulsorily retire the Petitioner in exercise of the Jurisdiction contemplated under Fundamental Rule 56 referred to hereinabove, the exercise to ascertain the fitment of the Petitioner for his continuance In service or putting an end to his service taking recourse to the measure of compulsory retirement could be taken only after the Petitioner Had reached the age of 50 years. This fact, it seems to me, had to be taken as a jurisdictional fact, only the pre-existence of which has to be treated as a sine qua non for the exercise of the special jurisdiction with which the appointing authority stands vested under the provisions contained in Fundamental Rule 56.

12. In the facts and circumstances of the case, as noticed hereinabove, the pre requisite condition indicated hereinbefore having not been satisfied, the Impugned order cannot be sustained in law having been passed in excess of the Jurisdiction which the appointing authority stood vested to cut short the service tenure of an employee which stood secured under the rules governing the conditions of service.

13. However, the facts noticed by the screening committee in its report dated 10.8.1989. a true copy of which has been filed as Annexure-CA-2 to the counter-affidavit which report had been accepted by the District Judge on 27.10.1989, cannot be lost sight of.

14. Considering the facts and circumstances brought on record in their totality, the requirement of Justice would be met if the impugned order compulsorily retiring the Petitioner from service dated 27th October, 1989 is quashed with the direction to the District Judge, the appointing authority to reconsider the case of the Petitioner for his continuance in service. The Petitioner has already crossed the age of 50 years by now

and there will be no impediment in exercising the jurisdiction envisaged under Fundamental Rule 56 as amended.

15. In the result, the writ petition succeeds in part. The impugned order dated 27th October, 1989 is quashed with a direction to the Respondent No. 1 to consider the case of the Petitioner for his continuance in service subsequent to 6.5.1993 on which date he attained the age of 50 years. The Petitioner shall be entitled to the service benefits up to 6.5.1993 and in case, the appointing authority comes to the conclusion that the Petitioner is fit to be continued in service subsequent to the aforesaid date, in that event the Petitioner will be entitled to service benefits in accordance with law during his continuance in service thereafter. The decision in the matter indicated hereinabove shall be taken within a period not later than one month from the date of production of a certified copy of this order before the appropriate authority, the Respondent No.