

(2005) 11 AHC CK 0175

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 43979 of 2004

Hari Shankar Pandey

APPELLANT

Vs

U.P. Power
Corporation Ltd. and
Executive Engineer
Electricity Distribution
Division (I)

RESPONDENT

Date of Decision: Nov. 18, 2005

Acts Referred:

- Constitution of India, 1950 - Article 309

Citation: (2006) 2 AWC 1422

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: A.P. Tewari and Yogesh Agarwal, for the Appellant; A.K. Mehrotra and R.D. Khare and S.C., for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. The petitioner entered into service of erstwhile U.P. Electricity Board in the year 1969(now U.P. Power Corporation limited). At the time of appointment the service book of the petitioner was prepared in which the date of birth of the petitioner was recorded as 4.1.1947. Accordingly he was given notice dated 18.3.2004 that he would retire on 31.1.2006 on the basis of date of birth as recorded in the aforesaid service book which has been signed by the petitioner on the first page.

3. The petitioner has challenged the notice dated 18.3.2004 on the ground that his date of birth has wrongly been recorded in the service book and that his correct date of birth has been mentioned as 4.1.1948 in the High School Certificate, hence

he may be retired on attaining the age of superannuation i.e. on 31.1.2006.

4. The counsel for the petitioner has relied upon Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 as adopted for application in U.P.S.E.B. Vide B.O. No. 2611-G.M:/SEB-II.I-28 GM/75 dated June 20, 1975. These Rules have been framed in exercise of the powers under the proviso to Article 309 of the Constitution and has been published by the Government of Uttar Pradesh under the provisions of Clause (3) of Article 309 of the Constitution vide Notification No. 41/2/69- Niyukti (4), dated May 28, 1974. The relevant clauses for the purpose of deciding controversy are as under-

(2) The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a Government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book, at the time of his entry into Government service, shall be deemed to be his correct date of birth or age as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

(3) These rules shall have effect, notwithstanding anything contrary contained in the relevant service rules or orders.

5. The counsel for the respondents submits that the petitioner never objected to the date of birth as recorded in the service book and for the first time an objection was raised by him on 15.3.2004 i.e. at the fag end of his service. He further submits that service book of an employee is a basic service record and the date of birth mentioned therein should be taken as authentic date of birth and unless the entry in the service record is corrected in accordance with date of birth subsequently claimed by the employee, the retirement of the said employee has to follow in accordance with the date of birth as recorded in the service book. It is urged that correction of date of birth in the service book can not be permitted just in a routine manner at the fag end of service. The counsel for the respondents submits that merely because different date of birth mentioned in the matriculation certificate does not automatically entitle the employee for change date of birth recorded in the service record and that the employee has to retire on the basis of the date of birth recorded in his service book. He further urged that principle of estoppel would be applicable against the person seeking the change in the recorded date of birth at the fag end of the service. In this regard reliance has been placed by the counsel for the respondents upon [Union of India Vs. Harnam Singh](#), and upon paragraphs 25 and 26 of the judgment in the case of Union of India v. C. Rama Swamy and Ors. AIR 1995 SG 2055. The counsel for the respondents has further placed reliance upon AIR 2003 SCV 3775 State of U.P. and Ors. v. Gulaichi and [Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another](#), .. The counsel for the respondents

has relied upon the case of [State of Assam and Another Vs. Daksha Prasad Deka and Others](#), and the paragraphs 6 to 14 of the judgment in the case of Burn Standard Co. Ltd. and Ors. v. Dinabandhu Majumdar and Anr. AIR 1955 SC 1499,. The Apex Court in the aforesaid cases has held that sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy and that application for correction of date of birth as recorded in the service book should not be entertained at the fag end on the grounds of acquiescence, undue delay and latches.

6. The counsel for the petitioner has urged that the writ petition for the change of recorded date of birth of a person at the fag end of service is not maintainable. It is urged by the counsel for the respondents that Uttar Pradesh Recruitment to Service (Determination of Date of Birth) Rules, 1974 as amended in 1980 can not be interpreted to the extent that merely because High School Certificate contained different date of birth then the retirement has to be made only in accordance with the date of birth mentioned therein and not on the basis of date of birth recorded in the service book. It is further submitted that the real import/scope of the aforesaid Rules, 1974 is that in case an employee has already passed High School prior to entering into service then the date of birth mentioned in the High School Certificate would be treated to be his date of birth but in the present case the petitioner has got the different date of birth recorded in the service book and signed on the relevant page of the service book then for his advantage the said employee can not get only advantage even if a wrong date of birth is recorded due to clerical mistake as the same has to be got corrected within a reasonable time as held by the Hon"ble"Supreme Court in the case of Burn Standard Co. Ltd. (surpa).

7. It has been lastly urged by the counsel for the respondents that in case the Court is of the opinion that the date of birth should be treated to be 4.1.1948 and the petitioner ought to have retired on 31.1.2006. The petitioner is not entitled for salary after 31.1.2005 till the date of reinstatement, if any on the basis of principle of "No work No pay" as it is not on account of the fault of the respondents that he had been retired on 31.1.2005. He further urged that even if the Courts comes to the conclusion that the decision of retiring the petitioner from the service is not correct/legal then the petitioner is himself responsible as he had given wrong date of birth at the time of entering into the service.

8. It is submitted that the date of birth of a large number of employees appointed along with the petitioner was also incorrectly recorded in the service records; that date of birth recorded in his service record in the circumstances can not be taken authentic proof of his date of birth even if the petitioner had inadvertently signed the front page of the service book and is to be corrected in accordance with the aforesaid rules.

9. Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 have been framed for deciding the controversy in respect of date of birth where there is variance between the dates mentioned in the service book and High School certificate and in his service record where employee has passed High School it provides finality to date of birth mentioned in the High School certificate. The petitioner has passed the High School before entry in service as the date of birth wrongly recorded in his service book is wholly irrelevant and has to be determined in accordance the aforesaid Rules, 1974 which also provides that the date of birth entered in the service book at the time of entry in service shall be deemed to be correct only in case the employee has not passed High School,

10. The cases cited by the counsel for the respondents are not applicable to the facts of the instant case as in none of the cases the Uttar Pradesh Recruitment to Service (Determination of Date of Birth) Rules, 1974 has been considered. They are confined to the facts of their own case.

11. In *Waman Rao v. Union of India* 1981 SC 271 and *Mahadeo v. State of Bombay* 1953 SC 108 it has been held that the Court should normally not interfere in such matters where correction in the date of birth is sought at the far end of service, and it is the duty of the Court to give literal interpretation to the language of the rule. It has further been held that only in cases where the rule is couched in ambiguous language then the literal interpretation of the rule may be departed from. In this regard reference may also be had to the judgment rendered in [Damodaran Pillai and Others Vs. South Indian Bank Ltd.,](#) . In the present case there is no ambiguity in the Rules, 1974 quoted above as such the full effect to the date given in the High School certificate has to be given. The rule employs prohibitory and mandatory language and no date other than the date given in the High School Certificate has to be taken for the purpose of retirement of the petitioner.

12. In so far as payment of salary of the petitioner of the intervening period is concerned, it is not denied by the respondents that the date of birth of many employees along with the petitioner in their service books the date of birth has been wrongly recorded. The petitioner had immediately signed the entry regarding the date of birth in the service book and came to know about it when he received the notice. It is also not in dispute that the petitioner had passed the High School before entering into the service as such according to Rules, 1974 the petitioner ought to have retired on 31.1.2006 but has been arbitrarily retired on 31.1.2005 even though respondents had been informed about the correct date of birth mentioned in the High School Certificate but no heed was paid by them.

13. The authorities have also not taken into consideration the aforesaid Rules, 1974 while retiring the petitioner from service on 31.1.2005, hence retiring him on 31.1.2005 was illegal and not proper i.e. it amounts to restraining him from work. The principle of "no work no pay" would not be applicable in the circumstances as the petitioner was forced not to work due to illegal retirement.

14. In the circumstances, the writ petition is allowed and the impugned order is quashed. The petitioner will be taken back in service with continuity of service forthwith and retiral dues etc. shall be computed taking his date of retirement as 31.1.2006. However, in the circumstances, the petitioner shall be entitled to 50% of the salary of the intervening period from 31.1.2005 to 15th November, 2005.