

U.P. Power Corporation Ltd. and Others Vs Mohd. Yunus Khan

Court: Allahabad High Court

Date of Decision: May 17, 2004

Acts Referred: Constitution of India, 1950 " Article 162, 226, 309

Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 " Rule 3, 5

Citation: (2004) 3 AWC 2789

Hon'ble Judges: M. Katju, J; K.N. Ojha, J

Bench: Division Bench

Advocate: S.K. Misra, for the Appellant; S.N. Yadav, for the Respondent

Final Decision: Allowed

Judgement

1. This special appeal has been filed against the judgment of the learned single Judge dated 23.3.2004.

2. We have heard Sri S. K. Mishra, learned Counsel for the Appellant and Sri S. N. Yadav learned Counsel for the Respondents.

3. The Petitioner was appointed on the post of Patrolman in the regular cadre w.e.f. 1.7.1968 and he was subsequently promoted as Linesman in

the Electricity Distribution Division, Govindnagar, Kanpur.

4. It is alleged that in April, 1998, when he approached his office at Basti he came to know that his date of birth has been wrongly entered in his

service book. Hence, he moved an application dated 30.4.1988, to the Executive Engineer stating that this date of birth was 1.7.1948 as per the

School Leaving Certificate and had wrongly been entered as 27.2.1934, when he entered service. It is alleged that the Respondent filed an

application on 2.9.1989 for correction of his date of birth which was ultimately rejected by the impugned order dated 7.4.1992, Annexure-6 to the

writ petition.

5. It is alleged by the Respondent that there was another person of the same name of Mohd. Yunus Khan who was holding the same post and pay

scale as the Petitioner and his date of birth was 27.2.1934. It is alleged that due to carelessness on the part of the official staff the medical

certificate of Mohd. Yunus Khan son of Amjad Khan was attached with the service book of the Petitioner Mohd. Yunus Khan son of Mojib Ullah

and the School Leaving Certificate of the Petitioner was attached in the service book of Mohd. Yunus Khan son of Sri Amjad Khan. Hence, the

date of birth was wrongly endorsed in the service book of each other. It is alleged that an enquiry was made and it was found that due to

inadvertence the wrong date of birth was mentioned in the service book and hence the Respondent (the writ Petitioner) was wrongly retired

treating his date of birth to be 27.2.1934 instead of 1.7.1948. The learned single Judge allowed the writ petition and hence this appeal.

6. In our opinion this appeal deserves to be allowed. The learned single Judge has treated the writ petition as if it was a first appeal and as if he

could interfere with findings of fact. It is well-settled that in writ jurisdiction the Court can only interfere when there is error of law apparent on the

face of the record and the High Court cannot act as an appellate court vide *Ranjeet Singh Vs. Ravi Prakash*, . The Respondent was appointed on

1.7.1968 but he moved an application for correction of his date of birth only on 2.9.1989, i.e., only 15 months before his retirement. It is well-

settled that change of date of birth could not be permitted at the fag end of service vide *Burn Standard Co. Ltd. and Others Vs. Dinabandhu*

Majumdar and Another, .

7. In the U. P. Recruitment to Services (Determination of Date of Birth) Rules, 1974, it is mentioned that if a person has passed High School then

the date of birth mentioned in the High School Certificate is to be treated as his date of birth. If he has not passed High School then the date of

birth recorded in his service book at the time of his entering service is to be treated as the date of birth.

8. In the present case, the Respondent entered into the service in the year 1968 and he never disputed his date of birth for 21 years. The date of

birth recorded in the year 1968 in his service book was 27.2.1934. It was only when he was about to retire that he started disputing his date of

birth.

9. In *Vimlesh Sharma v. Electricity Board* 2002 (4) AWC 2818, this Court held that disputed questions of fact about date of birth cannot be

investigated in a writ petition once it has been entered in the service book of the Petitioner.

10. In the case of *State of Orissa and others Vs. Ramanath Patnaik*, , the Supreme Court has observed in para 4: ""When entry was made in the

service record and when he was in service, he did not make any attempt to have the service record corrected. Therefore, any amount of evidence

produced subsequently would be of no avail...."" The Supreme Court has held that ""an employee cannot be permitted to seek correction of his date

of birth after his retirement"". In the case of *Hindustan Lever Ltd. v. S. M. Jadhav and Anr.* 2001 (4) AWC 216 (SC) : 2001 (2) ESC 338 (SC):

AIR 2001 SC 1665, the Supreme Court has elaborated its earlier view and held that ""an employee cannot be allowed to raise, at the fag end of

the career, dispute regarding correction of his date of birth." In the case of G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad

and Others, , the Supreme Court has held that "No dispute regarding correction of date of birth shall be permitted to be raised after long time of

his joining service unless it is based on some typographical or arithmetical error and the Court refused to interfere in such matter.

11. In Bhupindra Nath Chatterjee Vs. The State of Bihar and Others, , it was held that the date of birth recorded in the service record is to govern

the date of superannuation of the person from service.

12. The application for correction of date of birth as recorded in the service book should not be permitted to be corrected after inordinate delay.

In Union of India and others Vs. Kantilal Hematram Pandya, , the Supreme Court noted that the Respondent entered service in 1955 and gave his

date of birth as 6.9.1930. He allowed the matter to rest till he neared the age of superannuation. The Respondent slept over his rights to get the

date of birth altered for about thirty years and woke up from his deep slumber on the eve of his retirement only. The Supreme Court held that stale

claims and belated applications for alteration of the date of birth recorded in the service book at the time of initial entry, made after unexplained

and inordinate delay, on the eve of retirement need to be scrutinized carefully and interference made sparingly and with circumspection. The

approach has to be cautious and not casual. On facts, the Respondent was not entitled to the relief which the Tribunal granted to him.

13. In another case when long delay was made in seeking the correction of the date of birth and the application having been filed beyond the

statutory time limit it was held by the Supreme Court that the competent authority should reject such application and the plea of the employee that

the alleged mistake was discovered at about the time when he filed the application for date of birth which was about 40 years of the date of joining

the service cannot be accepted vide Chief Medical Officer Vs. Khadeer Khadri, . In Union of India (UOI) Vs. Ram Suia Sharma, , the Supreme

Court has again reiterated that the claim for correction of the recorded date of birth made 25 years after joining in the service should not have been

entertained by the Central Administrative Tribunal and the Tribunal's direction allowing such a claim was per se illegal, and that due to long delay

and laches, such a claim should not have been entertained by the Tribunal.

14. The object of the rule or statutory instructions issued under the provision of Article 309 or orders issued by the Government under Article 162

of the Constitution for the correction of date of birth entered in the service record, is that the Government employee, if he has any grievance, in

respect of any error or entry in the date of birth, will have an opportunity, at the earliest to have it corrected. Its object also is that the correction of

the date of birth beyond a reasonable time should not be encouraged. Permission to reopen the accepted date of birth of an employee, specially on

the eve of or shortly before the superannuation of the Government employee would be an impetus to produce fabricated records. Vide State of

T.N. Vs. T.V. Venugopalan, . In Burn Standard Co. Ltd. v. D. Majumdar, the Supreme Court held that the entry of date of birth noted in the

Admit Card of matriculation examination could not be relied upon by the employer to correct the date of birth recorded in the service and leave

register of the employee which was authenticated by the employee himself. Since the date of birth recorded at the time of joining service on the

basis of the SSLC register was challenged by the employee 35 years later and his previous application for correction seven years earlier had

already been rejected by the authority and at the belated stage, the only evidence was his oral evidence and the horoscope evidence, therefore, the

Supreme Court held that at the belated stage the horoscope evidence or oral statements cannot be believed, vide Collector of Madras and

Another Vs. K. Rajamanickam, . The Court held that in exercise of discretionary jurisdiction under Article 226 of the Constitution the High Court

should not entertain claims for correction of the date of birth at the fag end of service, vide Burn Standard Co. Ltd. and Others Vs. Dinabandhu

Majumdar and Another, .

15. In Ehtesham Ullah Khan Vs. Central Administrative Tribunal and Others, , this Court held that once the date of birth is recorded in the service

record at the time of entrance in service, it can be changed only by production of strong documentary evidence showing that it was incorrect. Any

document coming into existence subsequent to entrance in service in correctness or genuineness of entry therein has to be recorded as not free

from doubt. In the instant case, Petitioner joined service in 1963 and got his date of birth recorded as 17.5.1934. Thereafter, he passed High

School Examination in 1965, wherein the date of birth was recorded as 17.2.1943. He filed an application for change in his date of birth in 1987,

i.e., after 19 years of his service on the strength of this High School Certificate, a documentary proof, which by itself was, it was held that the

Tribunal, rightly rejected the application.

16. Similarly, it was held by this Court in R.S. Mehrotra Vs. Central Govt. Industrial Tribunal and Another, , that the documents obtained

subsequent to the date of joining the service cannot be relied upon for the purpose of correcting the date of birth as it might be very easy for the

employee to mention another date in the papers while preparing the other documents, which came into existence subsequently and the Industrial

Tribunal should not accept the claim of the workman placing reliance on such documents. In Maharashtra State Electricity Board v. Sakharan

Sitaram Shinde 1996 (72) FLR 562, the Bombay High Court has taken a similar view observing that the possibilities of fabricating the documents

just to support the bogus claim of an employee cannot be ruled out in such circumstances.

17. In State of Madhya Pradesh and Ors. v. Mohan Lal Sharma 2003 (1) AWC 568 (SC), the Supreme Court held that while examining the issue

of correction of date of birth the Court must be very slow in accepting the case of the applicant if the issue has been agitated at a very much

belated stage and it must examine the pros and cons involved in the case even if not raised by the parties. In the said case, the application for

correcting the date of birth was rejected observing, that if it was allowed the applicant would have deemed to have joined the service when he was

below 18 years of age, and, therefore, accepting such application would amount to sanctifying the illegal entrance in service.

18. In State of U.P. and Others Vs. Smt. Gulaichi, , the Supreme Court has held (in paras 8 and 9):

Normally, in public service, with entering into the service, even the date of exit, which is the 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 date of birth recorded were correct or not.

Most of the States have framed statutory rules or in absence thereof issued administration 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 a public servant. In the case of State of Assam

and Another Vs. Daksha Prasad Deka and Others, , this Court said that the date of 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 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:

The object underlying Rule 4 is to avoid repeated applications by a Government employee for the correction of his date of birth and with that end

in view it provides that a Government servant whose date of birth may have been recorded in the service register in accordance with the rules

applicable to him and if that entry had become final under the rules prior to the commencement of 1984 rules, he will not be entitled for alteration

of his date of birth.

19. It is thus a settled proposition of law that the date of birth entered in the service book cannot be corrected at a belated stage. Where the date

of birth entry remains in existence for a long time, the same should not be disturbed.

20. In our opinion an application for correction of the date of birth should not be dealt with by the Courts. Tribunal or the High Court keeping in

view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant

concerned at a belated stage has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in

this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned,

continues in office, in some cases for years, within which time many officers who are behind him in seniority waiting for their promotion, may lose

their chances of promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his

immediate senior. This certainly is an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the

grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to

be conclusive in nature, is made out by the Respondent and that too within a reasonable time of entering service, the Court or the Tribunal should

not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or

declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for

correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or

order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a

reasonable time of entering service. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the

Tribunal on the eve of their retirement questioning the correctness of the entries in respect of their date of birth in the service books. By this

process, it has come to the notice of this Court that in many cases, even if ultimately their petitions are dismissed, by virtue of interim orders they

continue for months, after the date of superannuation. This indeed is regrettable.

21. In the present case, the writ Petitioner (Respondent in this appeal) entered service in 1968 but he applied for correction of his date of birth

only 15 months before his retirement. There was nothing to prevent him from having applied soon after he entered service, or within a reasonable

time thereafter, but he did not do so. Hence, this Court should not have interfered in the matter. Moreover, reliance on a medical report for

determining the age is never reliable. Hence, the learned single Judge erred in this respect also. Writ jurisdiction was hardly the appropriate forum

for entertaining such factual controversies.

22. In view of the observations made above the appeal is allowed. The impugned judgment of the learned single Judge is set aside.