

Case :- WRIT - A No. - 6187 of 2021

Petitioner :- Bachan Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ram Pravesh Yadav, Bhagwan Dutt
Pandey, Radha Kant Ojha (Senior Adv)

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir, J.

(Order on the Writ Petition)

The petitioner retired as a Collection *Amin* on 31.10.2015. His date of birth in the service book recorded is 10.10.1955. This date of birth is also recorded in his High School Certificate earned in the year 1968 from the U.P. Board of High School and Secondary Education, Allahabad. The petitioner was drawing pension since 2015 and has been paid all his post retiral benefits. Now, by the impugned order dated 12.03.2021, the Sub-Divisional Magistrate, Shikohabad, District Firozabad, on the basis of a certificate from the school where the petitioner had read, has held that the petitioner's date of birth is 10.10.1950. It is trite law that an employee's date of birth recorded in the service book binds not only the employee, but the employer as well, and it cannot be changed as it is said on the eve of his retirement. Here, the employer is trying to revise or has revised the employee's date of birth after the retirement of the employee. He has looked into the employee's pre-high-school records and re-determined the employee's date of birth, going against the Boards' High School Certificate as also the service book. The order impugned is *prima facie* perverse and *prima facie* shows misfeasance in office on the part of the Sub-Divisional Magistrate, Shikohabad, District Firozabad.

Admit.

Issue notice.

Learned Standing Counsel accepts notice on behalf of all the respondents.

The petitioner is permitted to implead Sub-Divisional Magistrate, who passed the impugned order within three days.

Let separate notice issue to the newly added respondent in his personal capacity to show cause why appropriate action may not be taken against him for passing the order impugned, which *prima facie* is not only perverse, but one made *mala fide* against all canons of law that govern an employee's date of birth, determination of age and acceptance of date of birth recorded in the service book, after the petitioner's retirement.

Notice is made returnable on 24.06.2021.

Notice to the newly added respondent shall be caused to be served through the District Magistrate, Firozabad.

The said respondent shall file his personal affidavit showing cause in the matter.

List in the additional cause list on **24.06.2021** before the appropriate Bench.

(Order on Stay Application)

Issue notice, returnable on the date fixed.

By the impugned order, the petitioner has been ordered to refund salary that the petitioner earned for a period of five years. The said period of time is one during which the petitioner worked. Assuming that he worked for an extra period of time, the petitioner has to be paid for the period of time that the petitioner rendered work, recovery of which is prohibited as *begar* by Article 23 of the Constitution. Also, this Court finds that the impugned orders are *prima facie* illegal, balance of inconvenience is in favour of the petitioner and in the event a retired employee is compelled to refund a sum of Rs.27,85,388/-, he would suffer irreparable loss and injury.

Until furthers orders, operation of the impugned order dated 12.03.2021 passed by the Sub-Divisional Magistrate, Shikohabad, District Firozabad and the recovery citation dated 18.03.2021 issued by the *Tehsildar*, Shikohabad, District Firozabad, shall remain

suspended and no recovery shall be made from the petitioner.

Let this order be communicated to the Sub-Divisional Magistrate, Shikohabad, District Firozabad through the District Magistrate, Firozabad by the Joint Registrar (Compliance) within **24 hours**.

Order Date :- 27.5.2021

Anoop