

Court No. - 4

(AFR)

Case :- WRIT - A No. - 61181 of 2014

Petitioner :- Suresh Yadav

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

Counsel for Petitioner :- V.K. Singh,D.K. Singh

Counsel for Respondent :- C.S.C.,Dileep Kumar
Srivastava,S.Tiwari

Hon'ble Ajit Kumar,J.

1. Heard Sri A.K.Rai, learned Advocate holding brief of Sri D.K.Singh, learned counsel for the petitioner Sri D.K.Srivastava, learned counsel for the respondent and learned Standing Counsel for the State respondents.

2. Petitioner before this Court was appointed in the year 1984 as a peon on daily wage basis in the office of Town Area Committee, Dohri Ghat, Mau. Later on his services came to be regularized in the year 1992 and he continued in service. However, after July, 1992, suddenly his salary was stopped and his services were terminated which came to be challenged before this Court vide Writ Petition No. 35296 of 1993 which was allowed by a detailed judgment and order dated 21st March, 2006 and it was how petitioner came to be reinstated. Suddenly, as it is alleged in the petition, on the basis of some complaint regarding date of birth recorded in the service book as 1.1.1964 just for his date of birth differently so recorded in the Life Insurance Corporation Policy paper, the Chairman of the Nagar Panchayat, Dohri Ghat Mau came to pass order dated 28.8.2014 withholding the salary of the petitioner while seeking direction and guidance from the Director, Local Bodies U.P. Lucknow. It is this order, which is challenged before this Court.

3. The argument raised is two fold: firstly, petitioner was made to retire on 30th August, 2014 wrongly presuming his date of birth to be 1.1.1964 on the basis of policy bond papers and that too without

holding any enquiry worth its name and without giving any opportunity of hearing and notice much less a show cause notice to enable the petitioner to put up his defence; and secondly, date of birth even of a government servant can be changed in service book only on the basis of his High School Certificate of employee and no application was to be entertained for the change in date of birth originally recorded in service book.

4. Yet another argument advanced by learned counsel for the petitioner is that Chairman, was not justified in withholding the payment of salary of the petitioner taking petitioner to have retired on 30th August, 2014 and date of birth while in service book has continued to be entered as 1.1.1964 for the purposes of contract of employment between employer and the employee, more especially in the circumstances when guidance was being sought from the Director, Local Bodies, U.P. Lucknow both Nagar Panchayat, Dohri Ghat Mau, the contesting respondent no. 3 as well as District Magistrate who have filed their respective counter affidavit in the matter. In the counter affidavit filed by respondent no. 2, namely, District Magistrate, Mau it is stated that some enquiry was got conducted by Sub Divisional Magistrate, Ghosi Mau and on the basis of letter of Executive Officer of the Nagar Panchayat, Dohri Ghat and it transpired from the transfer certificate issued by an institution, namely, Krishak Inter College, Kunda that petitioner's date of birth was 20th July, 1950. This transfer certificate is stated to have been issued in 1967 and has been brought on record, according to which petitioner had failed in the High School examination twice conducted by the U.P. Board of High School Intermediate for the session 1965-66 and 1966-67. The enquiry report that bears signatures of Sub Divisional Magistrate and Executive Officer does not show that any regular enquiry was held in the matter and it was only a preliminary fact finding enquiry that was submitted to the District Magistrate. Still further, I do not find any averment in the affidavit sworn by Rama Kant Verma, Tehsildar of Tehsil Ghosi filed on behalf of District Magistrate Mau that having found entry in the transfer certificate to

the effect that petitioner had failed in the high school examination twice, the concerned enquiry officers appointed by the District Magistrate ever endeavoured to verify this fact from the Madhyamik Siksh Parishad, U.P. . Thus finding returned in the joint report of the Sub Divisional Magistrate and Executive Officer remained unverified from the proper place, which was Board of High School/Madhyamik Siksha Parishad.

5. In the considered view of the Court, this preliminary fact finding enquiry report itself cannot take form of regular enquiry to enable the respondent Nagar Panchayat, Dohri Ghat, Mau to retire the petitioner in the year 2014 presuming his date of birth as 20th September, 1950 .

6. Interestingly petitioner had been made to retire on 31st August, 2014 taking his date of birth to be 1st September, 1954 whereas in the enquiry report obtained by District Magistrate, the date of birth as per finding was 20th September, 1950. Thus, this enquiry report could not have formed basis to make the petitioner retire or get superannuated at an earlier stage than when he would have attained age of superannuation as per entry recorded in the service book.

7. In the entire counter affidavit filed by Chairman of the Local Bodies concerned, I do not find that at any point of time that petitioner's date of birth as originally recorded in the service book as 1.1.1964 was changed.

8. In my considered view without changing the date of birth originally recorded in the service book, an employee cannot be made to retire. The basic philosophy behind the service jurisprudence is that there is contract of employment between employer and employee. The service book maintained by employer is a part of the contract of employment and any change therein has to first take place as it would be altering the condition of

employment. The respondent local bodies were in clear error of law in superannuating the petitioner at an earlier age than what he would have attained as per service book entry.

9. One of the arguments advanced on behalf of the contesting respondent local body by learned counsel appearing in that behalf has been that petitioner did not pass out class eight from the institution which he was relying upon and instead he passed out class 8th examination from another institution. The institution from which petitioner claimed to have passed out, it was one Avatar Yadav who was student and transfer certificate of Avatar Yadav has been brought on record, but I find that there is no date of birth entered in that certificate, nor certificate bears signature of Principal or seal of Principal, nor certificate carries any date of issuance. It seems to be document either got prepared for the purpose of the case to defend the decision of the Chairman or somehow obtained that to mislead the Court on facts.

10. There could be an argument that Life Insurance Policy is one of the documents, in which date of birth of the petitioner was recorded as 1.1.1954, however, Life Insurance Corporation Policy is not a document for the purposes of determination of age in service law. Unless and until regular enquiry was held in the matter giving opportunity of hearing to the concerned employee to meet the charges. This aspect of the matter has virtually skipped the attention of the Chairman/ employer and therefore, merely because some private complaint was made citing the date of birth entered in the insurance policy of the petitioner, would not have entitled the Chairman of Local Body to unilaterally retire the petitioner at an earlier age and that too without changing the date of birth originally recorded in the service book at the time of entry in service.

11. Learned counsel for the respondent local body has not been able to show any rule or law otherwise which may entitle the local body to change date of birth of employee originally entered in

service book. In the circumstances provisions as contained under Rules 2 and 3 of Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 are reproduced hereunder:

"2.[Determination of correct date of birth or age.-The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the 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. Change of date of birth-Bona fide mistake.-The date of birth can be changed only if there was a bona fide mistake. The principle of estoppel will apply and hence when the Government servant had indicated a particular date of birth in his application form or any other document at the time of employment the Court should not change that date of birth."

12. From bare reading of the aforesaid provisions, it is clear that date of birth of employee who has not passed the High School Certificate cannot be changed once originally recorded at the time of entry in service.

13. In my above view I find support in the judgments of a coordinate benches of this court in the case of **Surendra Singh v. State of U.P and Others, 2019 5 ADJ 365**, and of the Division Bench judgment in the case of **Mohan Singh v. U.P. Rajya Vidyut Utpadan Ltd. And Others, 2012 (8) ADJ 383**.

15. The Courts have repeatedly held that actions to be taken by the authorities must be sound and reasoned one, more especially in service cases where interest of employees is at a stake and so respondents authorities are not supposed to act an arbitrary manner. The method in which the Chairman in the present case had passed the order impugned retiring the petitioner without assigning

any reason except relevant policy bond paper and that too without holding any enquiry. This was totally unwarranted .

16. It is unfortunate that District Magistrate in the matter has acted in a colourable exercise of power in holding such enquiry in a hush-hush manner. It was a case where he ought to have applied his mind, more especially when he is officer of Indian Administrative Service.

17. In view of above, the writ petition succeeds and is allowed. The order passed by the Chairman Nagar Panchayat, Dohri Ghat Mau dated 28.8.2014 is hereby quashed. The petitioner shall be reinstated in service and shall be taken to be in service until 31st December, 2023 and shall be paid salary accordingly. Whatever the amount has been paid towards retirement dues may be adjusted against salary and fresh post retirement dues shall be assessed and fixed and accordingly revised payment shall be made.

Order Date :- 4.7.2024
Sanjeev