
(2004) 09 J&K CK 0023
In the Jammu And Kashmir High Court
Case No : SWP 1786 of 2002

Abdul Aziz

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Constitution of India, 1950 — Article 311
Constitution of Jammu and Kashmir, 1956 — Section 126

Citation : (2004) 09 J&K CK 0023

Hon'ble Judges : Yash Paul Nargotra, J

Bench : Single Bench

Advocate : Ashok Parihar, for the Appellant; N. Goswami, Dy.A.G., for the Respondent

Judgement

Y.P. Nargotra, J.—The petitioner joined his service on 7th of December 1966 as a teacher in Education Department. In February 1981, he

was promoted as senior teacher and in October as Master, in November 1998 he was holding the post of Zonal Education Planning Officer

(Gazetted). From the said post, he has already retired. In the service record of the petitioner, his date of birth has been recorded as 22.4.1944 on

the basis of his Higher Secondary Diploma. The petitioner claims that his recorded date of birth is wrong, whereas his actual date of birth is 7th of

July 1947. When he was in service, he approached the respondents for correction of his date of birth. When his request was not acceded to by the

respondents, on 15th of October 1986, he filed a civil suit in the Court of Sub Judge Kishtwar for declaration to the effect that the date of birth of

the petitioner is 7.7.1947 A.D corresponding to 25.3.2004 B.K and not 22.4.1944 A.D and for injunction direction the defendants to correct his

date of birth in his service record. Learned Sub Judge Kishtwar by his decree-dated 15.12.1990 passed in File No.128/Civil titled Abdul Aziz Vs.

Govt. of Jammu and Kashmir Srinagar and others decreed the suit in the following terms against the defendants who were Government of Jammu

and Kashmir, Secretary to Government, Education Department J&K State and Director Schools Education, Jammu:-

Therefore, a declaratory decree declaring that the correct date of birth of plaintiff is 7th July 1947 which corresponds to 25th March, 2004 and

not 22.4.1944, is passed in favour of the plaintiff and against the defendants and the defendants are directed to make the necessary entry in the

service records of the plaintiff and other relevant records pertaining to the plaintiff.

2. After the passing of the decree, the plaintiff/petitioner filed an execution application against the defendants/judgment debtors /respondents in the

Court of Learned Sub Judge Kishtwar. It may be pertinent to mention here that defendants/respondents did not file any appeal against the

judgment-decree of Learned Sub Judge Kishtwar before any competent forum and therefore the decree passed by the Learned Sub Judge

Kishtwar has acquired finality. On the execution application, Learned Sub Judge Kishtwar directed Director School Education Jammu who was

defendant No.3 in the suit to make the necessary entry with respect to the date of birth of the plaintiff/decreed holder in his service or other relevant

records as per the decree passed and report compliance to the Court. In response to the direction issued by the Sub Judge Kishtwar in execution

proceedings a Head Assistant from the office of the defendants appeared on 15.7.1993, a letter written by Zonal Education Officer dated

15.7.1993 stood received in the Execution Court addressed to the Learned Sub Judge Kishtwar under No.734 saying therein:

3. In the light of judgment and as per Court directions the correct date of birth in favour of plaintiff has been entered as (Seventh 7th of July N.H

and forth seven) 7.7.47 against 22.4.44 in his service book and other relevant records. Hence the service book is enclosed for attestation of DOB

entry and early return to this office for record. Thereafter the seniority list came to be issued of the Masters (Male) of District Doda, by the office

of Chief Education Officer, Doda showing the name of the petitioner at serial No.58 A and in the column of date of birth his date of birth was

shown as 7.7.1947 and not the original date of birth i.e. 22.4.1944. Then another tentative seniority list in respect of the Masters of Jammu

Division also came to be issued in which the name of the plaintiff/petitioner was shown at serial No.89 and in this seniority list too date of birth of

the petitioner was shown to be 7.7.1947. The Zonal Education Officer Kishtwar by his endorsement-dated 12.7.1993 also appended a note into

the service book of the petitioner for correcting the date of birth of the petitioner from 22.4.1944 to 7.7.1947 on the basis of the decree passed in

the civil suit of the petitioner.

4. Learned Sub Judge Kishtwar by his order dated 15.7.1993 on receipt of the aforesaid letter of Zonal Education Officer Kishtwar dated 15th of

July 1993 disposed of the execution application by observing that decree passed stood satisfied and complied with by the respondents. In this

way, judgment and decree passed by the Learned Sub Judge Kishtwar on 15.12.1990 came to be complied with. However, almost seven years

thereafter the then Chief Education Officer Doda, by his communication No.CEO/D/G-1/27345 dated 20.2.2002 wrote to the petitioner that

during the perusal of his service book it has been revealed that his date of birth has been changed from 22.4.1944 to 07.07.1947 on the directions

of the Sub Judge Kishtwar and entry has been made by the Zonal Education Officer, Kishtwar. Therefore Chief Education Officer, Doda directed

the petitioner to produce the original records, with regard to the correction in the date of birth and his qualification certificates/Diploma issued by

the Board/University to his office within a week's time for onward transmission to Director School Education Jammu. Thereafter by his order

No.CEO/D/Legal/461-63 dated 5.4.2002 Chief Education Officer, Doda wrote to the Director School Education Jammu as follows:-

Kindly recall the verbal discussions held with your goodself on the subject.

Since the official is due for retirement on 30th of this month according to his date of birth i.e. 22.4.1944, entered in his service book as per Higher

Secondary Elective certificates issued by the Board bearing S.No.443 under Roll No.730 Session 1965, by Tehsil Education Officer Kishtwar

(Copy enclosed) an early settlement of the matter is solicited.

All the relevant papers have been submitted to your office.

5. It is pertinent to mention here that the official filed a Civil suit for declaration

to the effect that his date of birth was 07.07.1947, and not 22.04.1944 in the Hon'ble Court of Sub Judge Kishtwar against.

1. Govt. of Jammu and Kashmir Srinagar.

2. The Secretary to Govt. Education Deptt. J&K State and

3. Director School Education Jammu. The case was decided in favour of the plaintiff on 15.12.1990. (Copy enclosed).

6. The plaintiff decree holder filed an application before the Learned Sub Judge Kishtwar for execution of decree passed in the above-mentioned

suit. The application was disposed of on 31.03.1993, with the following directions.

7. The Director School Education Jammu is directed to make necessary entry with respect to the date of birth of the plaintiff/decreed holder in his

service book or other relevant records as per the decree passed by this Court and report compliance to this Court by 20.04.1993.

8. Vide this office No. 16000 dated: 8.10.1992 sent under Registered cover the Directorate was informed but no action was taken by the

Directorate. (Copy enclosed).

9. Zonal Education Officer, Kishtwar has made an entry on the service book of the official wherein he has changed the date of birth of the official

as 07.07.1947, as per the decree of the court without mentioning any authority. However, there was a direction to ZEO Kishtwar from Sub-Judge

Kishtwar to do so.

10. It is, as such requested that early instructions may kindly ! be communicated.

11. Chief Education Officer, Doda by his letter-dated 2.5.2002 wrote to the petitioner that he shall not draw his pay for the month of May 2002

and onwards till the clarification is received from the Directorate of School Education Jammu, and in the meanwhile he was asked to produce the

fresh Diploma from the Board of School Education Jammu after correction of his date of birth. The Directorate of School Education Jammu

brought the aforesaid fact leading to the change of the date of birth of the petitioner to the Commissioner-cum-Secretary to Govt. Education

Department, Civil Secretariat, J&K Govt. Srinagar vide letter dated 15.5.2002, submitting therein:

12. In view of the facts mentioned above, I am directed to request you that necessary instructions in the matter may kindly be issued at the earliest

as the plaintiff on the basis of entries of D.O.B, recorded in his Service Book as 22.04.1944 was to retire from Govt. Service on 30.04.2002 but

he is continuing beyond that date in the light of fresh entry of date of birth recorded by the then ZEO, Kishtwar, in the light of Court orders dated

15.12.1990 and 31.03.1993 passed by the Sub Judge, Kishtwar. Law Department may also kindly be approached to ascertain the appropriate

course of action like appeal, etc. Keeping all the above constraints into the account.

13. The Chief Education Officer, Doda then by his order No.CEO/D/6916-21 dated 3rd of July 2002 directed the Zonal Education Officer,

Marwah that as per the instructions from the higher authorities, Shri Abdul Aziz Incharge ZEPO Marwah whose date of birth as per Matriculation

certificate is 22.04.1944 (Twenty second of April Nineteen hundred and Forty Four) is deemed to have retired from service on 30.04.2002(A.N).

So his pension case may be processed accordingly.

14. The petitioner has challenged his retirement on superannuation on the basis of his date of birth as 22.4.1944 in this writ petition.

15. The case of the petitioner is that his date of birth stood corrected in compliance of ! the judgment of the Court and therefore, his retirement

prior to the attaining the age of superannuation on the basis of the corrected date of birth i.e. 7th of July 1947 tantamount to his termination from

service, and that his service could not be terminated without following due procedure as envisaged by Article 311 of the Constitution of India read

with Section 126 of the Constitution of Jammu and Kashmir. Therefore his retirement before reaching the age of superannuation is illegal,

arbitrary and colourful exercise of the powers and is therefore, liable to be set aside. It is submitted that petitioner has legal right for continuing in

service till he attains the age of 58 years from his actual date of birth i.e. 7th of July 1947. The petitioner therefore prays that order dated 3rd of

July 2002 passed by the Chief Education Officer, Doda be quashed by the writ of certiorari and respondents be directed to put back the petitioner

in service till he attains the age of 58 years on 31st of July 2005 and also pay all consequential monetary benefits i.e. his salary from the month of

May 2002 and onwards.

16. The stand of the respondents is that petitioner has been retired from service

after he completed the age of 58 years reckoned from the date of birth recorded in the service record as 22.4.1944 on the basis of his matriculation certificate. It is also the case of the respondents that petitioner had not got his date of birth corrected in his matriculation certificate which is only authentic document to be relied upon for computing the age of the petitioner. The State Board of School Education was deliberately not impleaded as party in the suit filed by the plaintiff and unless and until correction of the date of birth was made in the matriculation certificate the date of birth of the petitioner under the rules could not be changed and, therefore, the correct date of birth of the petitioner as per matriculation certificate being 22.4.1944, he has been rightly superannuated.

17. Heard learned counsel for the parties and perused the record.

18. Mrs. N. Goswami, learned counsel for the respondents submits that rule 35 AA of the Civil Service Regulations provides that date on which a

Government servant attains the age of superannuation shall be determined with reference to the date of birth declared by the Government

employee at the time of appointment and accepted by the appointing authority. Whereas prescribed qualification is matriculation or above, the date

of birth in the service record is required to be recorded on the basis date of birth recorded in matriculation or equivalent certificate issued by the

Jammu and Kashmir Board of School Education or any recognised Board/ University wherefrom the employee has passed such examination.

According to Mrs. N. Goswami, the petitioner joined the service and in proof of his date of birth he relied upon his higher secondary certificate

issued by the Board of School Education in which his date of birth was 22.4.1944. The said date of birth therefore, was recorded in his service

record and for determining of his date of superannuation the date of birth so recorded was to be considered. She submits that simply because the

petitioner had obtained a decree in his favour for alteration of the date of birth, his date of birth could not be changed under law, unless there was a

change in the matriculation certificate in view of the provisions contained in Civil Service Regulation in this behalf. She argues that after himself

giving the date of birth as 22.4.1944 by the petitioner he entered the service, therefore, he could not be permitted to say that date of birth was not

given correctly at the time of entering in service and that his actual date of birth

was different so he could not be superannuated.

19. Undisputedly the date of birth recorded in the service record of the petitioner on the basis of his Higher Secondary Certificate issued by the

Board School of Education/University is 22.4.1944. This date of birth was entered in the service record of the petitioner at the time of his entry ! in

the service. For alteration of this date of birth to 7.7.1947, the petitioner's civil suit was decreed by the Civil Court of Learned Sub-Judge

Kishtwar on 15.12.1990. The respondents- State and its other functionaries were party to the suit. The decree passed by the Civil Court was not

appealed against by any of the defendants and therefore has acquired finality and as such is binding upon the State as well.

20. By the decree of the Civil Court, the actual date of birth of the petitioner has been declared to be 7.7.1947. The decree also injuncted the

State and other defendants who are functionaries of the State to effect the necessary entry in the service records of the petitioner. The necessary

correction in pursuance of the decree passed already stands made. It is true under the Civil Services Rules and Regulation's the alteration in the

recorded date of birth of a Govt. servant could be made only with the previous order of the Government and the correction in the date of birth of

the petitioner was made without any previous formal order of the Government in this behalf. But in view of the fact that Government has accepted

the decree of the civil court and had not been left with any option but to implement the decree, the absence of formal previous order of the

Government does not and cannot invalidate the alteration of the date of birth in the service record of the petitioner. After the correction made in the

service record of the petitioner towards the satisfaction of the decree, the date of birth to be considered for determining the age of superannuation

of the petitioner was to be 7.7.1947 and not his previously recorded date of birth. The contention of Mrs. Goswami that petitioner's corrected

date of birth cannot under law be accepted in the service record for the purposes of determining his age of superannuation because there was no

corresponding correction in the Higher secondary Certificate of the petitioner is without any merit, for the simple reason that all the pleas and

defences open to the respondent- State for opposing alteration of the date of birth in the service record of the petitioner stands closed by the

decree of the Civil Court. The State after having accepted decree of the Civil Court cannot be permitted under law to say that actual date of birth

of the petitioner is 22.4.1944 and not 7.7.1947, as determined by the Civil Court in respect of the service record of the petitioner. Therefore, for

determination of the age of superannuation of the petitioner from service the period of 58 years was to be reckoned w.e.f. 07.07.1947 and not

from 22.4.1947. Had it been done the petitioner would have continued in service.

21. Every Government servant has a right to continue in service till he reaches his age of superannuation stipulated under the service rules by which

he is governed or until he is compulsorily retired or dismissed /removed from service on account of misconduct. It is not the case of the respondent

that petitioner has been compulsorily retired or removed from service on account of any misconduct. Therefore, retirement of the petitioner from

service by reckoning his age of superannuation w.e.f. 22.4.1944 cannot under law be sustained.

22. The writ petition of the petitioner as such is allowed, the order No. CEO/D/6916-21 dated 3.7.2002 is quashed and the respondents are

directed to put back the petitioner on post on which he was working at the time of his retirement and to allow him to continue in service till he

reaches the age of superannuation to be reckoned from 07.07.1947 his actual date of birth. The period of absence from service of the petitioner

shall be treated as period spent on duty. The petitioner shall also be entitled to all consequential monetary benefits.