

(1957) 09 AHC CK 0050

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 486 of 1956.

Ali Ahmad Siddiqi

APPELLANT

Vs

The Administrator, Municipal Board and Another

RESPONDENT

Date of Decision : 11-09-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 27 AWR 816

Hon'ble Judges : Gopalji Mehrotra, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant;

Final Decision : Dismissed

Judgement

Gopalji Mehrotra, J.—This is a petition under Article 226 of the Constitution praying that (a) a writ of mandamus be issued to the opposite parties, the Administrator, Municipal Board, Allahabad and the State of UP to treat the applicant as continuing in service of the Municipal Board until his services come to an end in accordance with law; (b) a writ in the nature of certiorari be issued to quash the order of the Administrator dated 26-4-1954 and the order of the State Government dated 9-1-1956.

2. Briefly the facts are that the Petitioner entered in the service of the Municipal Board, Allahabad to the year 1927. At the time of his recruitment in service the Petitioner gave the year of his birth as 1894 and his service book was maintained on that basis. On the basis of the date of birth given by him when he entered into service he was due to retire on 6-3-1954. Every year in April a list is prepared to be put up before the Chairman of all the employees who are due to retire next year and consequently like list was put up before the Chairman of all the employees including the Petitioner who was due to retire on 6-3-1954 in the year 1953. The Chairman of the Municipal Board made certain enquiries about the date of birth given by the Petitioner and on 24-6-1953 passed the following order:

I have seen the letter of Superintendent, Naini Central Jail dated 9-5-1953 in which he has certified that the age of Sri Ali Ahmad Siddiqi at the time of admission to that Jail on 2-11-1921 was 22 years. Necessary correction of birth year may be done in his service book accordingly.

3. It appears that the Petitioner was tried by a Special Tribunal in Mandalay Fort in Burma in the year 1917 and was sentenced to death, subsequently commuted into transportation for life. He remained in Andaman Islands. There after four years stay he was transferred to Naini Central Prison in November 1921. At the time when he was brought to Naini Central Prison, Allahabad, certain enquiries were made about his age and on the basis of that enquiry the Superintendent, Naini Central Prison had come to the conclusion that the Petitioner's age was 21 year in November 1921. On an enquiry made in the year 1953 this information was given by the Superintendent, Naini Central Prison to Municipal Board, Allahabad. Relying upon that information the Chairman ordered the correction of the age and in the service book the date of his birth was recorded at 6-3-1899 in place of 6-3-1894, recorded at the time of his recruitment.

4. It appears that the Allahabad Municipal Board was superseded and the Administrator was appointed who was informed that corrections in the age of some of the employees were wrongly made. There after he made an enquiry into the matter and on 26-4-1954 he passed the following order:

The ultimate position is this that on all available basis and on the basis of the entries in the service book which are admitted by Shri Siddiqi himself his date of birth is 6-3-1894 and under the rules as they are, this date has to be accepted for all purposes. He accordingly is declared to have attained the age of 60 years on 4-3-1954. As his case has been a complicated one and enquiries had to be made with regard to the attempt made to alter the date, it was impracticable to terminate his services when he, as now found, attained the age of 60 years. He was accordingly given extension and I order it to be with effect from 6-3-1954, upto 30-9-1954.

5. It is this order of the Administrator which is challenged by means of this petition.

6. The contention raised by the Petitioner is that there were certain regulations made by the Board under Section, 297(1)(k) and Regulation 5 of the said Regulations provides as follows:

If the age of the employee appear to be doubtful, the board shall make such enquiry as is necessary and shall then record a formal finding as to the age of the employee concerned; and the age so determined shall be deemed to be the correct age for the purpose of these regulations.

7. It was in pursuance of the aforesaid powers given to the Board that the enquiry was made by the Chairman in the year 1953 inasmuch as the Chairman in had the delegated power of the Board in this matter. The contention raised by

the counsel for the Petitioner is that the finding of the Chairman is final and it is not open to the Administrator who was the successor of the Chairman to set aside that order and cancel the correction order made by the Chairman. There is no substance in this contention. The power which was exercised by the Chairman in determining the age was an administrative power and it is open under certain circumstances to his successor to recall that order. The question before the Administrator was whether the Petitioner had attained the age of 60 years and had ceased to be in service with effect from 6-3-1954 or he should have been retained in the service. The Chairman in the year 1953 had ordered the correction of his age and according to that he was due to retire in the year 1959. But the administrator relying upon the regulation made by the Governor in the exercise of his powers u/s 297(2), printed at p. 454 of the Municipal Manual, declared that the Petitioner had attained the age of 60 years and could not be further retained in service. The regulation printed at p. 454 regarding retention and retirement of Municipal employees runs as follows:

Regulation regulating the maintenance of a correct record of the age of municipal employees with reference to regulation 5 of the model regulations regarding retention and retirement of these employees:

The age of the employees entered in his matriculation, high school or other equivalent certificate, if there is one, and in other cases that given at the time of his recruitment shall be deemed to be the correct age for the purposes of his retention in, and retirement from, Municipal service.

8. This regulation was framed by the Governor in the year 1941 and it had come into existence and was in operation when the Chairman passed his order in the year 1953 and it was also in operation when the Administrator passed the order subsequently. Regulation 5 which was originally framed by the Board itself was a regulation relating to the maintenance of the record regarding the retention and retirement of the employees of the Board and when the Governor framed a regulation which is printed at p. 454 of the Municipal Manual regarding retention and retirement of the employees of the Board, the regulation framed by the Governor will prevail over the regulation 5 of the Board and u/s 297(2) Municipalities Act the Administrator was therefore justified in relying upon the provisions of the new regulations printed at p. 454 and it cannot be said that the order passed by the Administrator now is without jurisdiction. I am also of the opinion that the power of correction and determination of the correct age for the purposes of maintenance of the record exercised by the Chairman under regulation 5 is an administrative power and could have been recalled by the Chairman himself or the successor in these circumstances specially when the Chairman at the earlier stage had passed the order ignoring the provisions of the regulation framed by the State Government printed at p. 454.

9. There is, therefore, no force in this petition and it is rejected with costs.