

(2009) 07 AHC CK 0369
In the Allahabad High Court
Case No : Special Appeal No. 68 of 2009

Amar Nath Tewari

APPELLANT

Vs

District Inspector of Schools, Sultanpur and Others

RESPONDENT

Date of Decision : 27-07-2009

Acts Referred:

Citation : (2010) 124 FLR 643

Hon'ble Judges : Retu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Advocate : S. Chandra, for the Appellant;

Final Decision : Allowed

Judgement

Pradeep Kant and Retu Raj Awasthi, JJ.—This special appeal has been filed challenging the order dated 30.7.2008 passed by the Hon''ble Single Judge in Writ Petition No. 6955 (S/S) of 2001, Amar Nath Tewari and others v. DIOS, Sultanpur and others whereby the writ petition filed by the petitioner challenging the order dated 10.8.2001 by which the petitioner was asked to retire on 15.6.2001 on the ground that his date of birth was incorrectly and without authority changed by the school authorities from 1.1.1954 to 15.6.1941, has been dismissed.

2. Learned Single Judge dismissed this writ petition relying upon the response of the respondents according to whom the date of birth 1.1.1954 was recorded in the service book but the same was found incorrect in an inquiry conducted by the DIOS.

3. The petitioner's High School certificate issued by the U.P. Board of High School and Intermediate Education recorded date of birth as 1.1.1954, though he cleared the High School examination, after he had joined the service but his date of birth in the service book recorded as 1.1.1954 tallied with the date of birth recorded in the High School certificate but the same was modified vide order dated 10.8.2001 to 15.6.1941 by the school administration.

4. The date of birth as recorded in the service book at the time of entry into service has to be given due sanctity and the same cannot be altered or modified either on the instance of employee or on the instance of employer unless the rules so provide and unless it is found that incorrect date of birth was recorded in the service book. In case the date of birth recorded in service book tallies with the date of birth recorded in High School certificate though High School examination might have been cleared after the employee had entered into service there cannot be any ground for treating the date of birth so recorded in the service book as incorrect merely because some other evidence like transfer certificate from one school to another of lower class, show a different date of birth.

5. Rule 2 of U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 provides that 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 examinations 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.

6. It is not clear from the record as to what inspired the respondents for holding inquiry about the date of birth of the Appellant as against the one recorded in the service book, and even if it is presumed that any complaint was made by any interested person, even then the controversy had to be decided keeping in mind the rules aforesaid and not by taking into consideration such evidence which is not admissible.

7. The date of birth 1st January, 1954 was duly recorded in the service book at the time of entry into service. The petitioner passed the High School in 1989 in which certificate the same date of birth was recorded. He continued to serve the institution with the same date of birth till 2001.

8. In our opinion there was no occasion for changing the date of birth as 15.6.1941 after such a long time and the fact that High School certificate was obtained by the Appellant after entering into service, therefore, the plea that it cannot be given credence has no force for the reason that the same corroborated the date of birth which was recorded in the service book at the time of entering into the service. The date of birth recorded in the service book at the time of entry into service therefore has to be treated as the date of birth of the Appellant.

9. The appeal is allowed and the order dated 30.7.2008 passed by the learned Single Judge is set aside. The order dated 19.1.2001 passed by the DIOS. By which the date of birth 1.1.1954 has been modified and the consequential order of retirement dated 10.8.2001 are quashed. The petitioner shall be reinstated into service forthwith and shall be paid his regular salary, including the arrears of

salary minus difference of pension amount which he might have a received till the date of reinstatement. The arrears shall be paid within a maximum period of two months, from the date of production of certified copy of this order.