

(1990) 04 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6406 of 1990 connected with
C.M.W. No. 6479 of 1990

Ambika Singh

APPELLANT

Vs

U.P. State Sugar Corporation Ltd. and Another

RESPONDENT

Date of Decision : 26-04-1990

Acts Referred:

Citation : (1990) 04 AHC CK 0056

Hon'ble Judges : V.N. Khare, J;H.C. Mital, J

Bench : Division Bench

Advocate : Arvind Kumar and Mr. K.P. Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

V.N. Khare, J.—Since common question of fact and law are involved in these two writ petitions, we propose to decide these petitioners by a common judgment.

2. By means of these two writ petitioners the petitioners who are employees of Chhitauni unit of U.P.State Sugar Corporation, Deoria, have come up to this Court against the notice dated 1.3.1990 issued by the respondents retiring them from service with effect from 1.4.1990.

3. Petitioner Ambika Singh in Writ Petition No.6406 of 1990 as originally an employee of M/s. Lakshmi Devi Sugar Mills, Deoria (hereinafter referred to as the Mills). The mills was taken over under U.P. Sugar Undertaking (Acquisition) Amendment Act, 1985 with appointed date as 28.10.1984. By the impugned notice dated 1.3.90 petitioner Ambika Singh has been informed that he would retire on 1.4.90 as he has already attained the age of superannuation in the year 1988, his year of birth being 1928.

4. In writ petition No.6479 of 1990, petitioner Bankey Mishra was also an employee of erst-while M/s. Lakshmi Devi Sugar Mills. On its being taken over under the U.P.Sugar Undertaking (Acquisition) Amendment Act, 1985, he became employee of Chhitauni unit of U .P. State Sugar Corporation, Deoria. By the

impugned notice dated 1.3.90 he has also been informed that he would retire on 1.4.90 as he has also attained the age of superannuation in the year 1987, his year of birth being 1927.

5. Counter and rejoined affidavits have been exchanged and we have heard the learned counsel for the parties.

6. Before we had taken up the cases, for hearing on merits, learned counsel appearing for the respondents raised a preliminary objection. The preliminary objection is that since the petitioner have an alternative remedy by agitating the matter before the Labour Court under the U.P. Industrial Disputes Act, these petitioners may be dismissed on the ground of alternative remedy. No doubt, the petitioners have an alternative remedy by getting the matter referred to the Labour Court for adjudication. But the question is as to whether on the facts on record, we should decline to interfere in the matter on the ground that the petitioners have alternative remedy? In these writ petitioners counter affidavits have already been called for and are filed. The argument of the learned counsel for the petitioners is that the year of birth of the petitioners has been changed as recorded in their service-books, without giving any opportunity to them and for that purpose he does not rely upon any fact contained in the writ petitions or documents annexed there with but relies only upon facts stated in counter affidavit and annexures filed along with it. For the purpose of deciding this case, there is no controversy about facts before us nor any inquiry regarding any fact has to be made. Only question of law whether impugned order is void being passed against principle of natural justice has to be decided on the basis of a document annexed with the counter-affidavit filed by the respondents. No doubt whenever there is disputed question of fact, even if the counter affidavit is called for, the Court normally decline to interfere with the matter in case it is found that the petitioner has an alternative remedy available to him under law. But in view of the above factual and legal position we over-rule the preliminary objection and proceed to decide these writ petitions on merits.

7. Shri K.P. Agarwal, learned counsel for the petitioners argued that the orders retiring the petitioners are illegal and void as the same amount to retiring the petitioners on altered date of birth without giving any opportunity to them. In these cases counter affidavits have been filed on behalf of the respondents. Annexure-2 to the counter affidavit is a report submitted by Internal Auditor to the Joint Managing Director-II, U.P. State Sugar Corporation Ltd. Lucknow. It is admitted in the said document that the date of birth of the petitioner which is 1938 is duly stamped and signed by the receiver. Similar is the position in the connected writ petition of Sri Bankey Misra. His date of birth recorded is 1937.

8. The question arises for consideration as to whether any opportunity of hearing is necessary if the date of birth recorded in the service-books of the petitioners as 1938 and 1937 respectively are to be altered by the respondents to 1928 and 1927 respectively for the purpose of retiring them from service. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, it was held as under:

".....It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

9. The case of *State of Orissa v. Dr. (Miss) Binapani Dei* (Supra) is also a case of altercation in date of birth and it was held and it was held that if any change has to be effected, the incumbent must be given opportunity to meet the allegations. We accordingly hold that an incumbent is entitled to have opportunity of hearing to meet the allegation before his date of birth is altered.

10. We have to see now to whether in the present cases the petitioners were given opportunity at all before they were made to retire on altered date of birth. The case set up in the counter affidavit is that the date of birth of Ambika Singh in the records of Provident Fund Commissioner and Life Insurance Corporation policy dated 28.2.74 is 1.7.1928. Similarly the date of birth recorded in the Provident Fund and Life Insurance Corporation police, in the case of Bankey Mishra, is 1927. Subsequently when the matter came up in the notice of the Corporation, the matter was enquire at length and a letter was sent to the petitioner Sri Ambika Singh on 23.12.89. By the said letter the petitioners was required to furnish certificate for certifying his date of birth recorded as 1.7.1938. Similar notice is alleged to be given to Sri Bankey Mishra. On the strength of these notices it was argued that the petitioners were given an opportunity before they were made to retire treating them having born in the year 1928 and 1927 respectively. Assuming what has been stated in the counter-affidavit is correct, the said notices do not fulfill the requirement of law as pointed out by the Supreme Court in the case of *State of Orissa v. Dr. (Miss) Binapani Dei* and others (Supra). At present admittedly the date of birth as recorded in the service-books of the petitioners are 1938 and 1937 respectively and if they are to be changed on the ground that alteration already made in the service book is not borne out of record of fraudulent, it is incumbent upon the respondent to have given an opportunity to the petitioners to meet the allegations. From the counter affidavit, supplementary counter affidavit and the document filed alongwith with the writ petitioner, it is not shown that any such opportunity was afforded to the petitioners before they were made to retire on the basis of altered date of birth. In such circumstances the impugned orders dated 1.3.1990 are not sustainable in law and the same deserve to be quashed.

11. In the result the writ petitioners are allowed. The impugned orders dated 1.3.1990 are quashed. However, it will be open to the respondents to proceed against the petitioners afresh in accordance with law.