
(1956) 08 AHC CK 0026
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1051 of 1955

Badri Prasad Dubey

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-08-1956

Acts Referred:

Constitution of India, 1950 — Article 311
Uttar Pradesh Municipalities Act, 1916 — Section 297

Citation : AIR 1957 All 124 : (1956) 26 AWR 732 : (1957) 1 LLJ 209

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : B.N. Misra, for the Appellant; S.N. Verma and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mehrotra, J.—The petitioner Badro Pd. Dubey joined service of the Kanpur Municipal Board as a Terminal Tax Inspector in the year 1926 on a year's probation. He was duly confirmed on the post on the expiry of the probationary period. The petitioner alleges that at the time of his appointment there was some discrepancy between the age given in his Matriculation certificate and his age according to the horoscope, and he brought out the discrepancy to the notice of the Municipal Board and adduced proof of his real age.

Enquiries were made as provided for under Regulation No. 7 of Clause 5 of the Kanpur Municipal bye-laws and model regulation given in Municipal Manual. The age given in the horoscope was accepted as the correct age. This age was entered in his service book, The entry was attested every five years as required by Rule 4, Regulation 11 of the Kanpur Municipality bye-laws and continued throughout.

In spite of the continued entry of his correct age in accordance with his horoscope the matter was brought to the notice of the authorities of the local-self department and eventually a communication was received from the Deputy

Secretary to the Government, Uttar Pradesh, through the Administrator, Municipal Board, Kanpur dated 29-8-1955 to the effect that on representation the attention of the Board is directed to the regulation regulating the maintenance of correct record of age of Municipal employees printed on page 454 of the Municipal Manual (1952 Edition) and to say that the date of birth of Sri Badri prasad Dubey should be taken to be the one as borne out from his Matriculation Certificate.

A copy of this communication was forwarded to the petitioner with the remark that the retirement of the petitioner is due on 30-10-1955, On the age given in the Matriculation Certificate. The petitioner would have retired on the 30-10-1957.

2. The contention, however, of the petitioner was that the correct age of the petitioner according to the horoscope on the date when he passed the Matriculation examination that is, 31-3-1914 was 16 years, 7 months and not 18 years, 6 months as shown in the certificate. According to his correct age he should have retired on 30-10-1957. On these facts the petitioner moved a petition under Article 226 of the Constitution on 21-10-1955 for the following reliefs:

(a) To declare and hold that the order of the Administrator dated 3-9-55 intimating to the applicant that his retirement is due on 30th October, 1955 is illegal and ineffective against the applicant.

(b) that the opposite parties be restrained to hold that the correct date of birth of the applicant is 15th October 1895 and

(c) to declare that the correct date of birth of the applicant is 28th August 1897. When this petition was moved no stay order was granted and the petitioner has now, therefore, re tired from service.

3. It may be pointed out at this stage that the petitioner averred in his affidavit that Sri J. N. Saxena, Terminal Tax Inspector, developed ill-feeling against the applicant due to the applicant's reports against his unsatisfactory working and it was Mr. Saxena who managed to have this settled matter of the applicant's age raked up again through filing an application against the applicant.

The matter was finally placed before the Administrator by the interested parties and enquiry was made from the applicant as to why 15-10-1895 should not be accepted as the correct date of birth through a letter dated 12-4-55. Thereafter all the facts were put up by the petitioner before" the Administrator and it appears that the matter was referred by him to the State Government on which the communication referred to earlier was received.

The petitioner has. however, not placed his case on the ground that the order was obtained by mala fide action of Sri J. N. Saxena. No facts have also been set out in detail in his affidavit which go to establish any mala fides on the part of the Municipal authorities in passing the order dated 3-9-1955 nor has it been

pointed out as to how Sri J. N. Saxena could influence the Administrator or the State Government in passing the order in dispute.

4. The main contention urged by the petitioner was that at the time of his appointment the petitioner gave his age according to the horoscope and the date of birth given by him was recorded in his service book. Every five-year entry in the service book was attested and it was not open to the Municipal authorities to change the service entry and bring it in accordance with the Matriculation certificate.

In the counter affidavit it is stated that the date of birth recorded in his service book was September 1897 and as the date according to the horoscope is 28th August 1897 the discrepancy was brought to the notice of the Municipal authorities and as no reliance could be placed on the entry in the service book, the age in the Matriculation certificate was accepted to be correct. The petitioner was informed of the decision of the Board by its letter dated 30-4-1955 and he was asked to make any representation against this decision.

A representation was made by the petitioner on 25-5-1955 which was sent by the Board to the Government for final order. The communication dated 3-9-1955 was received in reply to a representation made by the applicant. In support of the contention the petitioner relied upon the bye-laws framed by the Municipal Board u/s 297(1) (k) which is as follows :

"If the age of the employees appears 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 observed to be the correct age for the purposes of these Regulations."

In my view this clause does not apply to the present case. The procedure laid down in the paragraph referred to above is to be observed at the time of the appointment in case there is any dispute as regards the actual date of birth. An enquiry has to be made by the Board and the decision arrived at is final. There is, however, a subsequent notification issued by the Government under which the regulation referred to above has been amended in order to set at rest the controversy as regards the date of birth.

It has been laid down in the amended regulation that the date of birth given in the High School or the Matriculation Certificate will be considered to be final. The regulation at page 454 of the Municipal Manual reads as follows:

"The age of the employee entered into 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 retrenchment from, municipal service."

The State Government invited the attention of the Board to that regulation and the Board had no option but to accept the entry in the certificate as the only binding entry for purposes of retirement, and pension. The petitioner has relied

on R. 14 of the Fundamental Rules regarding recruitment in service in the departments of the State. Rule 14 provides:

"It is important that the age of a candidate for direct recruitment should be correctly recorded. This can be done at the time of appointment and appointing authorities shall, when making first appointment, obtain for permanent record evidence regarding the correct age of the candidate. The date of birth or age recorded in the High School Examination Certificate should ordinarily be accepted. If there is any reason to doubt the accuracy of the date of birth or age as recorded in that certificate, the candidate should be required to produce further evidence which may be in one or more of the following forms:

- (a) the affidavit of the parent or guardian;
- (b) the production of the horoscope or such other record;
- (c) copy of the scholar's record showing the date of birth at the time of first admission to a school;
- (d) production of a medical certificate by the Civil Surgeon of the district;
- (c) an authenticated birth or baptismal certificate.

When the date of birth has stood unchallenged for a number of years, it should not be altered except in very exceptional circumstances. Thus the age of a government servant as recorded in his service book and attested for a number of years should not be corrected only on the ground that it is different from that noted in the Matriculation certificate."

These are the fundamental rules regarding recruitment to the service in the departments of the State Government. These rules have no application to the Municipal employees whose appointments and conditions of service and retirement are regulated by the Municipalities Act or the bye-laws or regulations framed thereunder. There is a specific bye-law dealing with the Municipal employees framed u/s 297, Municipalities Act, and the case of the present applicant is governed by that law. It was contended by the petitioner's counsel that the Municipal employees are to be treated on the same footing as Government servants.

5. Reliance was placed in this connection on the case, *L. Shanker Lal Dahania Vs. L. Balkishan and Another* . That was a suit brought by two employees of the Municipal Board against the Board .for damages and arrears of pay, and in that connection it was observed by this Court that

"The Municipal servants stand on the same footing as other public and Government servants. They are under the same disability as other public servants. Unless in special cases, where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the crown, not by virtue of any special prerogative of the Crown but because such are the terms of their engagement as is well understood throughout the public service. The conditions

of service are regulated by the rules which are framed to regulate the procedure of appointment and dismissal.

The tenure of office though at pleasure is not to be subject to capricious or arbitrary action but is to be regulated by such rules. Provisions for appeal are also made in the rules to get redress in cases where dismissals are made in contravention of the prescribed rules of procedure. The remedy of person aggrieved in case of non-compliance of the rules does not lie by a suit in Court, even though dismissal might be a result of malice, but is by way of appeal of official kind prescribed in the rules."

This case, to my mind, as will be apparent from the observations quoted does not apply to the facts of the present case. The Municipal Board employees may have been guaranteed the same protection as any other employee of the State but the protection is to be found in the rules and regulations governing the conditions of service of the. Municipal employees. The petitioner cannot rely on the fundamental rules ignoring the regulations framed u/s 297 which specially deals with the question of the retirement of the Municipal employees.

In my opinion, therefore, the opposite parties did not act without any authority in correcting the age and bringing it in conformity with the date of birth in the Matriculation certificate, which for purposes of retirement was rightly regarded as conclusive evidence and this Court will not exercise its discretion under Article 226 of the Constitution and direct the opposite parties to vacate the order retiring the petitioner in accordance with the correct age.

6. The petition is accordingly rejected but I make no orders as to costs.