
(2014) 11 AHC CK 0237
In the Allahabad High Court
Case No : Special Appeal No. 958 of 2014

B.D.M. Municipal Girls Inter College	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 AHC CK 0237

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : Vinod Kumar Singh, Advocate for the Appellant; A.K. Sharma, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Pradeep Kumar Singh Baghel, J.
—The special appeal arises from a judgment of the learned Single Judge dated 8 September 2014.

2. The third respondent was appointed as a Class-IV employee in the B.D.M. Municipal Girls Inter College, Shikohabad, District Firozabad on 8 December 1982. The appointment appears to have been made at the behest of the District Magistrate since the husband of the third respondent was killed in the course of an incident of mass violence. The case of the appellant is that in the service book, the date of birth of the third respondent was recorded as 7 January 1949, which was duly countersigned by the third respondent. On this basis, the third respondent was to attain the age of superannuation on 30 January 2009. In January 2008, the pension papers were prepared by the then Principal of the Institution. When the third respondent obtained knowledge of the preparation of the pension papers, an advocate's notice was addressed on 16 July 2008 on her behalf.

3. Eventually, a writ petition was filed under Article 226 of the Constitution, for quashing the decision of the Principal dated 24 July 2008 and for seeking a mandamus not to retire her from service until she attains the age of superannuation in 2019 or 2020.

4. The learned Single Judge has, in the impugned judgment, noted that the third respondent had filed a medical certificate issued by the Chief Medical Officer, Firozabad on 25 June 2008 mentioning her age as 48 years. Moreover, it appears from the impugned judgment that an interim direction was issued during the pendency of the petition in pursuance of which the third respondent was subjected to a medical examination by the Chief Medical Officer, Allahabad on 2 April 2012 after which, a medical certificate was issued recording her age as 53 years. The learned Single Judge has not entered a finding of fact as such, but has directed the Principal and the Manager of the Institution to submit all the relevant papers before the District Inspector of Schools, who was permitted to be impleaded and the latter was directed to pass an appropriate order in accordance with law within one month.

5. Learned counsel appearing on behalf of the appellants states that the impugned direction of the learned Single Judge is directly contrary to the provisions of the Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 under which, the date of birth or the age recorded in the service book at the time of entry into Government service is deemed to be the correct date of birth for all purposes and no application or representation shall be entertained for correction of such date of birth or age in any circumstances whatsoever. Moreover, it has been submitted that the application for correction was moved only after the third respondent received knowledge of the preparation of the pension papers in 2008 well over twenty five years since the date of joining of service.

6. On the other hand, the contention of the third respondent is that the medical certificate has been interpolated and even the original entry in the service book was made on the basis of an alleged medical examination, which was flawed.

7. We find from the record that the appellants had not filed a counter affidavit to the writ petition. According to the third respondent, the appellants were duly served, but this has been seriously disputed on behalf of the appellants.

8. Be that as it may, and particularly, having regard to all the facts and circumstances of this case, we are of the view that it would be appropriate in the interest of justice to allow the appellants an opportunity to controvert the contentions in the petition by filing a counter affidavit before the learned Single Judge. The Court has been assured that counter shall be filed within three weeks from today.

9. The learned Single Judge has merely referred to the factual background and to the medical examination which took place in pursuance of the interim direction issued by this Court. However, no finding has been made by the learned Single

Judge either on the principle of law involved in such a case or for that matter on any issue of fact.

10. The third respondent, as a matter of fact, is a member of the non-teaching staff and whether the District Inspector of Schools would have the authority and jurisdiction to decide the controversy, is also a moot question.

11. In this view of the matter, we allow the special appeal and set aside the impugned order dated 8 September 2014 and restore the writ petition (Writ-A No. 54092 of 2008) to the file of the learned Single Judge. In terms of the request, which has been made on behalf of the appellants before this Court, the appellants are granted three weeks' time from today to file their counter, which shall be filed, in any event, no later than by 1 December 2014. The learned Single Judge may consider the request for expeditious disposal of the petition. The appellants shall also produce all the original records before the learned Single Judge at the time of hearing.

12. The special appeal is, accordingly, disposed of. There shall be no order as to costs.