(2011) 09 UK CK 0040

In the Uttarakhand High Court

Case No : Writ Petition No. (SS) 871 of 2010

Bhagwan Singh Rana APPELLANT

Vs

Uttarakhand Power Corporation and Others RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Uttaranchal Recruitment to Services (Determination of Date of Birth) Rules, 2003 — Rule 2

Citation : (2012) 1 UC 670

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : M.C. Pant, for the Appellant; B.D. Upadhyay assisted by Ms. Jyoti Joshi, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Sudhanshu Dhulia, J.—Heard Mr. M. C. Pant, Advocate for the petitioner and Mr. B. D. Upadhyay, Senior Advocate assisted by Ms. Jyoti Joshi, Advocate for the respondents. What is under challenge before this Court is the date of birth of the petitioner. According to the petitioner his correct date of birth is 2.3.1953. It is this date of birth which is recorded in the year 1972 when he was employed in the employment of the State power corporation. It is the same date of birth, which is recorded in his School Leaving Certificate as well as in his certificate of Class V. It is necessary to mention that Class V certificate is given to him by District Inspector of Schools as it is evident from the certificate, which he has annexed as annexure no. 3 to the writ petition. Subsequently, an order was passed on 7.10.2004 which is annexed as annexure no. 1 to the writ petition in which it has been stated that the date of birth of the petitioner is not 2.3.1953 but 1.9.1951 which is based on a medical examination done on the petitioner. The date on which the medical examination was done has not been stated in the counter affidavit.

2. Learned senior counsel appearing for the power corporation Mr. B. D.

Upadhyay, has failed to apprise this Court as to when the medical examination was -actually conducted on the petitioner. Statement has been given by the respondents that the entire record pertaining to the service of the petitioner were burnt in the year 2007 and thereafter a medical examination was done. According to the respondents, there are no record of the service of the petitioner with them. The respondents relied upon an Act which is applicable to the employee of State Government which is known as the Uttaranchal Recruitment to Services (Determination of Date of Birth) Rules, 2003 (from hereinafter referred to as "2003 Rules"). What is relevant is Rule 2 of 2003 Rules which reads as follows:-

2. Determination of correct date of birth or age.- 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 examination 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, for all purposes in relation of his service, including eligibility for promotion, superannuating, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date of age in any circumstances whatsoever.

3. Overriding effect.- These rules shall have effect, not with standing anything contrary contained, in the relevant service rules or order.

3. These rules in fact do not help the respondents but on the contrary help the petitioner, inasmuch as it is the pointed contention of the petitioner that the date of birth recorded in his service record at the time of entry of service was 2.3.1953. Hence he could reach his age of superannuation only after completing 60 years.

4. The case of the petitioner is that in the service record initially the date of birth recorded was 2.3.1953. Thereafter in the year 1977 the date of birth was again incorrectly given as 9.9.1951. This, the petitioner tried to correct by moving an affidavit stating that as per Class V and Class VIII certificate his date of birth is 2.3.1953 and thereafter it was recorded as such. The only contention of the respondents for making his date of birth as 9.9.1951 is that he was appointed as work charge employee in the year 1969 as a work charge employee which is below the age of 15 years and hence could not have been appointed. The contention of the respondents has absolutely no relevance inasmuch for the reasons that even if one assumes for the sake of argument that this is so, no presumption can be drawn against the petitioner as the work charge employee is not in a regular employment of the power corporation. What is only relevant is the date of birth recorded at the time of entry in service, which is recorded as 2.3.1953, which were also recorded in Class V Class VIII certificate (in absence of High School examination done by the petitioner). What is also relevant is that these two examinations were done by the petitioner prior to his joining the

service. In other words, these two certificates relate to a period prior to the petitioner having gained employment. The veracity of these documents cannot be doubted. The Rules relied upon by the power corporation namely "Uttaranchal Recruitment to Services (Determination of Date of Birth) Rules. 2003", therefore will only help the petitioner as far as determination of date of birth is concerned.

5. There is another aspect to the whole issue. It is an admitted case of the respondents that they have determined the date of birth of the petitioner as 9.9.1951 on the basis of medical examination done on the body of the petitioner. Assuming this to be correct even here a 2 years'' margin regarding the age is generally given in such cases. What is being claimed (by the petitioner) and what is being admitted by the respondents is a difference in date of birth which is less than 2 years. Therefore, even here the benefit would be given to the petitioner regarding his date of birth.

6. Therefore the writ petition succeeds. The correct date of birth, which has to be recorded in the service records of the petitioner is 2.3.1953. No order as to costs.

