
(1998) 02 AHC CK 0107
In the Allahabad High Court
Case No : C.M.W.P. No. 14305 of 1997

Bhola Nath Yadav

APPELLANT

Vs

Joint Director of Education and another

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Constitution of India, 1950 — Article 23, 23(1)
Constitution of India, 1950 — Article 23, 23(1)
Constitution of India, 1950 — Article 23, 23(1)

Citation : (1998) 2 AWC 1482

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : B.P. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

O.P. Garg, J.—The petitioner. Bhola Nath Yadav. who was employed as Head Clerk in the office of the District Inspector of Schools (for brevity "D.I.O.S."), Allahabad, has challenged the order dated 17.2.1996 and the subsequent order dated 18.2.1997 whereby a sum of Rs. 1,36,235.25 p. is sought to be recovered from him by way of deducting the same from his retrial benefits.

2. Counter and rejoinder-affidavits have been exchanged. Heard Sri B. P. Srvastava, learned counsel for the petitioner as well as learned standing counsel on behalf of the respondents.

3. The petitioner was working as Senior Clerk in the office of D.I.O.S., Allahabad. His date of birth according to High School Certificate is 8th September, 1935. On attaining the age of 58 years, he was to stand superannuated on the last date of the month, i.e., 30th September, 1993. Amazingly, the petitioner continued to work even after the aforesaid date of retirement and he was superannuated on 27th February 1996 by the department. Surprisingly enough, after the aforesaid date of retirement, the petitioner was also given promotion to the post of Head Clerk in the aforesaid office on 4.4.1995.

4. The stand taken by the respondents is that the petitioner has been instrumental in removing the first page of his Service Book and made manipulations by overwriting on the year of his birth, meaning thereby, instead of "1935", he made it as "1938" on the basis of which he was to retire on 30th September, 1996 and it was in these circumstances that the petitioner continued to work even after the actual date of his superannuation and was granted promotion to the post of Head Clerk. Since a fraud was committed by the petitioner, salary and other allowances paid to the petitioner from 1.10.1993 to 27.2.1996. I.e., for the period after the date of his actual superannuation is recoverable from him.

5. Learned counsel for the petitioner urged that the Service Book was never in the possession of the petitioner and he cannot be held responsible for the manipulations, if any, made in the year of birth of the petitioner. It was also pointed out that in the seniority list, correct date of birth of the petitioner as 8.9.1935 was mentioned which was not taken note of by the department. It was also urged that it was the duty of the department to have served the petitioner with a notice a month before the actual date of superannuation and no such notice was given to the petitioner and since the petitioner has actually worked for the period 1.10.1993 to 27.2.1996. the emoluments paid to him cannot be recovered as it would amount to Begar which is prohibited under Article 23 of the Constitution of India.

6. It is an indubitable fact that the petitioner had appeared in the High School Examination in the year 1954 from Seva Samiti Vidya Mandir Inter College, Allahabad and his date of birth recorded in the High School Certificate is 8th September. 1935. On the basis of age of superannuation, which is 58 years, the petitioner should have stood superannuated on the last day of the month, i.e., 30th September. 1993. No notice, as required under the rules, was served on the petitioner, intimating him the date of his retirement and consequently the petitioner continued to work even after 30th September, 1993. Learned counsel for the petitioner urged that since it was the duty and the responsibility of the department to serve a notice to the petitioner prior to his retirement and nothing of the kind was done, the petitioner is not at all at fault, and. therefore, the salary for the period 1.10.1993 to 27.2.1996 for which period the petitioner has actually worked, cannot be deducted from his retrial benefits and consequently, the order for withholding of his pensionary benefits or payment thereof after the deduction of Rs. 1,36,235.25 p. Is illegal and void. This submission of the learned counsel is deceptive by its over-simplicity. The matter is not so simple, and as would be evident from the following facts, the petitioner was himself responsible for continuing in service after actual date of his retirement. In any case, but for the active role of the petitioner and his highly objectionable and deplorable act, the petitioner would not have continued to serve the department beyond the period of his attaining the age of 58 years.

7. A literate employee cannot be expected to forget his correct date of birth. This

fact is pre-known to every employee that on which date he has to retire on attaining a particular age--it may be 58 or 60 years. Even if the department has failed to give a notice prior to the date of the retirement of an employee, he himself should have known the exact date or the last date of the month on which he has to stand superannuated. Therefore, no blame can be thrown on the department for not having served a notice on the petitioner before his attaining the age of 58 years. In the instant case, the matter did not stop here. The petitioner was Senior Clerk in the department. He had an access to his service book and personal file. What he did was that, imbued with an urge to remain in service even after the actual date of retirement, his criminal propensities dominated him, with the result he removed the first page of his service book, which contains the various details such as, father's name, native place, height, thumb impressions, educational qualifications, as well as date of birth, which is normally incorporated both in words and figures. Not only this, he scored out the original entries in his other sheets of the service book to interpolate the year of his birth. The word "1935" was substituted by "1938". This fraudulent act of the petitioner earned him promotion to the next higher post of Head Clerk after the actual date of his retirement and he continued to work as such till the fraudulent act of the petitioner was detected on 27.2.1996 on which date he was relieved. The submission of the learned counsel for the petitioner that the petitioner had no occasion to make the alleged interpolation in his own service record as it was not in his custody and possession. Is wide off the mark for one simple reason that it was the petitioner who himself was to stand benefitted by the Interpolated year of birth. No other person was interested in committing such type of fraudulent act. The petitioner, therefore, cannot wriggle out of the responsibility for having made the fraudulent entry about his year of birth. Since he was Senior Clerk and subsequently became the Head Clerk, he was in a position to keep the matter hidden in the penumbral zone far away from scrutiny by the department and this fact eloquently explains the reason why a notice before retirement was not served on the petitioner.

8. The fact that interpolation was made by the petitioner is further fortified by the reason that the petitioner was hesitant to produce his original High School Certificate when an enquiry was made into the matter. The petitioner initially resorted to dilly-dallying attitude and ultimately gave a totally false and concocted explanation that his High School Certificate has been damaged/destroyed in the floods of the year 1978. It was with great difficulty that his date of birth was verified from educational authorities after ascertaining the fact that he had passed High School in 1954 from Seva Samitl Vidya Mandir Inter College, Allahabad. The petitioner, who was Head Clerk in the Department, should have straightaway divulged about his exact date of birth but he did not do so obviously for the reason that he had a guilty mind. There can, therefore, be no escape from the finding that the petitioner has committed fraud and it was on account of his manipulations and machinations that he continued to serve even after he had crossed the age of superannuation, i.e., 58 years. It is in this

background of the established fact that the submission of the learned counsel for the petitioner that the recovery of the amount paid to the petitioner as salary for the period 1.10.1993 to 27.2.1996 cannot be effected, has to be tested. Learned counsel pointed out that there are a number of authorities on the point that if a person has actually worked for a particular period, he shall not be deprived of his salary and even if subsequently it is found that he was not authorised and entitled to work, the amount of salary paid to him for the period for which he has actually worked cannot be recovered. A reference was made to Mahmood Hasan and others, etc. etc. Vs. State of U.P. and others, ; Shyam Baku Varma and others v. Union of India and others (1994) 2 SCC 621 and the decision of a Division Bench of this Court in Harish Chandra Srivastava v. State of U. P. and others (1996) 3 UPLBEC 1840. According to the learned counsel, the period for which the petitioner has worked beyond the date of his retirement may be treated as fortuitous. I have carefully scrutinised the various observations made in the aforesaid cases and find that they are not attracted in the instant case. In all the cases referred to above, the ratio decidendi is that if a person has worked for a particular period and has been paid his salary, it cannot be recovered if ultimately it is found that he is not entitled to receive the salary provided there was no fault on the part of the employee who was allowed to work. In the instant case, the conclusion is entirely against the petitioner. As said above, the petitioner himself brought about the situation. But for his fraudulent act and manipulation in his year of birth by himself, he could not have overstayed on his job after the actual date of retirement, i.e.. 30.9.1993. Therefore, a reference to the aforesaid rulings is otiose in the present case.

9. A short and swift reference may also be made to the submission of the learned counsel for the petitioner that recovery of the salary already paid to the petitioner would amount to "begar". which is prohibited under Article 23(1) of the Constitution of India. It is true that to ask a man to work and then not to pay him any salary or wages savours of beggar, which is prohibited in Article 23 of the Constitution. In the present case, it is not the question of beggar, but of recovery of money which the petitioner has earned as a result of his fraudulent act and, therefore, in the instant case, the controversy with regard to Article 23 of the Constitution cannot be raised.

10. Fraud unravels everything. It affects the solemnity, regularity and orderliness and credibility of the departmental records. Fraud vitiates everything and a person committing the fraud cannot cry for justice. Fraud and justice never dwell together and similarly, fraud and deceit defend or excuse no man. The petitioner had snatched the period of about 29 months" service which would not have been available to him if he had not made interpolation in the year of his birth. It was a result of sharp and fraudulent act on the part of the petitioner that he continued to work till 27.2.1996, i.e., for about 29 months when the malpractice adopted by the petitioner was detected. Merely because the petitioner has continued in service and worked for a period of about 29 months on the basis of the fraud and misrepresentation perpetrated by him, on his employer, it would not create any

equity in his favour or any estoppel against the employer. By mere passage of time, a fraudulent practice would not get any sanctity.

11. The department has very rightly come to the conclusion that the petitioner worked for about 29 months after the date of his actual retirement on account of his own fraudulent act in manipulating the year of his birth and consequently, the amount of Rs. 1.36.235.25 N. P. Is recoverable from him and his promotion to the post of Head Clerk after the date of his actual retirement was also of no consequence. In case a lenient view in the matter is taken, as has been prayed for by the learned counsel for the petitioner, this Court would be a party in sending a wrong message and signal to all the employees who may be encouraged to resort to the misdeed as has been committed by the petitioner. No leniency in the matter is warranted in the light of the facts of the present case. The generosity of the Court is liable to be misinterpreted as it may amount to putting a premium on dishonesty and sharp practice, which on the facts of the present case, cannot be permitted. As a matter of fact, a proper lesson would be taught to all those who take recourse to the fraudulent acts that dishonesty could never pay.

12. In the result, for the reasons narrated above, the writ petition fails. It is accordingly dismissed. Costs easy.