

(1993) 10 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24662 of 1993

Brajvir Jha

APPELLANT

Vs

U.P. State of Electricity Board and Others

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 — Rule 2

Citation : (1994) 2 AWC 784

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; S.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—In this writ petition, counter affidavit has been filed. Both the learned Counsel are agreed that the writ petition may be disposed of finally at this stage.

2. Facts giving rise to this writ petition are that the Petitioner was appointed as Junior Electrician by order dated 3rd September, 1962. Order of appointment has been filed as Annexure-1 to the writ petition. This order required Petitioner to bring a medical fitness certificate and authentic proof of age. In pursuance of this direction, Petitioner got himself medically examined on 4th September, 1962 and submitted a medical certificate before the appointing authority, wherein his approximate age was shown as 26 years. On the basis of the aforesaid medical certificate, which is Annexure-2 to the writ petition, the date of birth of the Petitioner mentioned in the service record was 3rd July, 1935. On the basis of the Petitioner's continuing in Service of Board, he was promoted as Jointer on which post he was presently serving. By order dated 1st December, 1992, Annexure-4 to the writ petition, Petitioner was intimated that he is going to retire on 31st July, 1993 on the basis of his date of birth 3rd July, 1935 and he must complete the formalities with regard to retirement. On receipt of this order Petitioner filed

a representation disputing the correctness of the date of birth. However when no action was taken, he filed a writ petition in this Court which was disposed of finally on 6th April, 1993 with a direction to Respondent No. 3 to consider the representation of the Petitioner and to decide the same by a reasoned order and in case the representation is accepted the date of birth may be corrected. The order of this Court is Annexure-7 to the writ petition. The Petitioner filed his representation dated 12th April, 1993 alongwith copy of the order of this Court. The contention of the Petitioner was that he joined services on 4th September, 1992 and he filed a medical certificate as proof of his age and as in the medical certificate he was shown of 26 years of age, the date of birth in the service book should have been 3rd September, 1936 and on the basis of this, Petitioner is entitled to continue up to September, 1994. The representation of the Petitioner, however, has been rejected by order dated 11th May, 1993 on the sole ground that in view of the Government Order dated 30th June, 1975 no representation whatsoever can be entertained for correction of the date of birth shown in the service record. In fact the order dated 30th June, 1975 is an order by the U.P. State Electricity Board by which it has made applicable the provisions of U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974, here-in-after referred to as "Rules", to the employees of the Board also. The order dated 30th June, 1975 has been filed as Annexure -XV to the counter affidavit. A counter affidavit it has been filed resisting the claim of Petitioner.

3. I have heard learned Counsel for the parties at length.

4. Sri Ashok Khare, learned Counsel appearing for the Petitioner has submitted that the mistake in the service record is very apparent and clear. From the record it is clear that the date of birth 3rd July, 1935, has been mentioned on the basis of medical report and if medical report is relied on, the date of birth cannot be 3rd July, 1935. It could be only 3rd September, 1936 as claimed by Petitioner.

5. Learned Counsel has further submitted that the order dated 30th June, 1975 and the Rules of 1974 could have only prospective application. They could not be made applicable so far as the date of birth mentioned prior to enforcement of the Rules are concerned. It has been further submitted that the impugned order dated 11th May, 1993 is arbitrary and illegal as claim of Petitioner has not been considered on merit.

6. Sri S.P. Mehrotra, learned Counsel appearing for the Respondents, on the other hand, has submitted that Petitioner signed the service record when the date of birth 3rd July, 1935 was mentioned which is clear from Annexure-3 to the writ petition. He put his signature in english which shows that he had full knowledge of the date of birth mentioned in the record, but he never disputed the same during the period of 30 years, remained in service. He disputed the same only on receipt of the notice dated 1st December, 1992. Learned Counsel for the Respondents has further submitted that the order dated 30th June, 1975 and the Rules of 1974 in fact, contained rule of evidence to close any dispute against the date of birth mentioned in service record at the time of the entry in

the service and the purpose and object behind Rule of 1974, was to close the dispute with regard to the date of birth at the time of retirement and the Executive Engineer rightly rejected the representation of the Petitioner by the impugned order as he had no option but to obey the command of the Rule.

7. Learned Counsel has further submitted that the Petitioner has signed the service book on several occasions thereafter also but he never disputed the correctness of the date of birth. Learned Counsel has farther referred to several documents prepared with regard to the Petitioner wherein same date of birth was mentioned, which were not disputed, particularly papers prepared at the time of promotion. It has also been submitted that She Petitioner has submitted all the papers for obtaining gratuity etc. and in all papers he has mentioned his date of birth as 3rd July, 1935. The dispute now raised is malafide and has no substance.

8. I have considered the submissions of the learned Counsel for the parties. In my opinion, the claim of the Petitioner cannot be accepted for more than one reason with regard to correction of the date of birth. The first reason is that he failed to submit the authentic proof of age at the time he entered into the service for which he was required specifically. The medical certificate relied on by the Petitioner only gave an approximate figure of age which cannot in any way termed to be authentic proof of age. The certificate only says that the candidate according to the appearance is about 26 years. No other date except the appearance has been mentioned in this certificate. Thus the Petitioner himself failed to give any authentic proof of age at that time. From the signature put in the service record it is crystal clear that he was literate and knew hath English and Hindi languages. In service record he has put his signatures in both languages on various occasions. On the first page of the service book which is Annexure 3 to the writ petition, he has put his signature in english which clearly shows that he was well aware about the date of birth mentioned in the record.

9. Learned Counsel for the Petitioner has strongly argued on the basis of the cutting in Annexure-3 and has submitted that it was by interpolation that the dale of birth was changed but from a close scrutiny the contention does not appear to be correct. It appears that the month of July was common and year was mentioned previously as 1936 and also 1934. Subsequently both were cut and 3rd July, 1935 was mentioned which only shows that the authority making the entry in absence of any authentic proof of the age had some doubt in his mind and he subsequently thought it proper to mention 1935 as the year of birth of Petitioner. This entry continued for over 30 years and was not disputed Petitioner cannot deny the knowledge of this entry in view of his signatures in the service book on various occasions which is clear from Annexure C.A.-1.

10. The second reason is the effect of Rules of 1974, which has been made applicable to the employees of the Board also Rule 2 of Rule 1974 is relevant for determining the present controversy which is being reproduced below:

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 as 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 his correct date of birth or age. as the case may be, for all purposes in, relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

A perusal of this Rule shows that once the date of birth or the age is recorded in the service book at the time of entering into the government service, it shall be deemed to be his correct date of birth or the age as the case may be for all purposes in relation to his service including eligibility for promotion, superannuation, premature retirement or retirement benefits and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever. The purpose of the Rule is very clear. By this Rule all disputes with regard to the date of birth have been closed and the date of birth mentioned in the service record has to be deemed correct for all purposes. The contention of the learned Counsel for the Petitioner that the Rule could have only prospective effect cannot be accepted. The Rule came in force on 20th May, 1974 and the events of retirement of the Petitioner is subsequent to the enforcement of the Rule and the Rule shall apply to the question of retirement of Petitioner. The Rules of evidence are all Part of the procedure laws and thus the Rules of 1974 which contain provision to accept the date of birth mentioned in service record as correct shall apply in case of Petitioner also and this will cover all cases of retirement after the Rules of 1974 came into force. The application of the Rules cannot be avoided on the ground that the Petitioner's date of birth was mentioned in the record in 1962. As already observed earlier the Petitioner was literate on the date when he joined the services. However he for the best reasons known to him did not prefer to file any document relating to his academic qualification and preferred to rely on the medical certificate which was nothing except the guess work as the appearance may be some times so deceptive that even the expert medical person may not assess the correct age. For these reasons the claim of the Petitioner has rightly not been accepted and the impugned order does not suffer from any illegality.

11. For the reasons recorded above, this writ petition has no force and is, accordingly, rejected. The interim order dated 30th July, 1993 is vacated. No order as the costs.