
(2002) 09 AHC CK 0012
In the Allahabad High Court

Brij Bhan Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Uttar Pradesh Recruitment to Services Rules, 1974 — Rule 2

Citation : (2002) 5 AWC 3696

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Anil Kumar Misra and Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Petitioner has prayed for a writ of certiorari to quash the order dated 4.7.2002 passed by District Magistrate, Azamgarh retiring him w.e.f. 31.12.1999 on attaining the age of sixty years and to recover salary for the period he had worked after 31.12.1999 from his pension and gratuity and to lodge an F.I.R. against him for playing fraud in entering fraudulent date of birth in his service book.

2. I have heard Sri Ashok Khare, senior advocate, assisted by Sri Anil Kumar Mishra for Petitioner and learned standing counsel for Respondents.

3. Brief facts of this case are that Petitioner Brij Bhan Yadav son of Shri Mohan Yadav, a peon in the office of District Magistrate, Azamgarh, entered service declaring his date of birth to be 1.1.1953. A complaint was received on which a charge-sheet was issued to Petitioner on 4.4.2001 stating that he entered into service on 1.6.1978 giving his date of birth as 1.1.1953, whereas in a case before Deputy Director of Consolidation, he gave a statement on 14.3.1984, to the effect that he is 45 years old, the transfer certificate issued by the Principal of Junior High School Rani Ki Sarai, Azamgarh, show that his date of birth, as recorded in school, is 1.1.1940 and his father's name is shown as Ram Das Ram, and in the family register, his date of birth is entered to be 1939. In the transfer

certificate issued by the Headmaster of Primary School Semraha, the date of birth of Petitioner's son Ram Tirath Yadav is recorded as 1.2.1958, and the date of birth of his second son is recorded as 1.12.1964. It is not possible for a human to have a son at the age of five years and thus, prima facie, his date of birth is not correct, and that he had played fraud in not giving his correct date of birth at the time of entering in service. The documents referred to in charge-sheet were to be read as evidence against him.

4. Petitioner submitted a detailed reply denying the allegations. He claimed estoppel in raising the issue after 29 years, and stated that after the examination of documents and completing other formalities, the then officer in-charge Nazarat Sub-Divisional Officer had verified Petitioner's signatures on service book on 23.9.1983 certifying his date of birth as 1./1.1953. There is no over-writing or cutting on the service book. According to the U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974, the date of birth entered in the service book at the time of entry is conclusive. In the statement given by Petitioner before the Deputy Director of Consolidation, Azamgarh, it is mentioned that his father's name is Mohan and not Ram Das Ram as mentioned in the school leaving certificate. So far as the age of his two sons, namely, Ram Tirath Yadav and Surendra Kumar, is concerned, it was admitted by him that he is their father. However, he stated that his sons were admitted to school by his elder brother, who was the karta of Joint Hindu Family and that he cannot be held responsible for the incorrect information given by his brother.

5. The enquiry officer reported that Petitioner had concealed his correct age by producing a false school leaving certificate of Class VII to gain advantage in service and that a false entry has been made in his service book in connivance with officials in the year 1982. It was also found that Ram Das Ram was brother of Petitioner's father Mohan. Banwari son of Ram Das Ram died at early age. In order to illegally acquiring his property, Petitioner started using the name of his uncle Ram Das Ram as the name of his father. Smt. Dhiraji, widow of Ram Das, had sold her entire property in 1974 to Surya Bhan son of Mohan. At some places, his father's name was disclosed to be Ram Das which is reflected in school leaving certificate recording his correct date of birth as 1.1.1940.

6. Petitioner was given a copy of enquiry report to which he replied on 6.11.2001. The District Magistrate found that the date of birth of Petitioner's elder son of Ram Tirath Yadav is 1.2.1958 whereas Petitioner's date of birth has been recorded in service book as 1.1.1953, which was totally absurd, inasmuch as Petitioner could not have become father at the age of five years. Relying upon the school leaving certificate of Primary School Semraha, Azamgarh, he recorded a finding that Petitioner's correct date of birth is 1.1.1940 and that he would have retired on 31.12.1999 on completing sixty years of age.

7. Learned Counsel for Petitioner has relied upon a Division Bench judgment of this Court in State of U.P. and others Vs. Sharda Prasad, , in which it was held that Rule of 1974 admit no exception and the employer cannot be permitted to

ignore the date of birth recorded in the "service book". The date of birth mentioned in other service records of Petitioner is of no consequence. He cannot be retired without giving notice and an opportunity of hearing. On the basis of documents, like janam kundli and he cannot be compelled to pay back the emoluments for the period he had worked. Para 21 of this judgment is relevant for the purposes of this case wherein the Bench observed that if the correction is only to remove an "obvious and apparent" accidental mistake/slip, apparent absurdity as a consequence of interpolation or forgery in record (which is required to straighten the records to bring in line with other material on record) then it is not a "change" or "correction" of a nature which in real sense brings change in long settled factual position otherwise proved on record. The order of learned single Judge by which he found that Petitioner has not entered in service at the age of 14-15 years and that the change of date of birth was found to be correct, was upheld by allowing appeal in part only with regard to recovery of the amount paid to the Petitioner as salary for the period he had worked.

8. In the present case, Petitioner was given full opportunity to reply to the charges. He was also required to comment to the report of enquiry officer. The submission that in the school leaving certificate, the name of Petitioner's father was wrongly mentioned, does not find support for the reasons given by the enquiry officer where it was found that in order to acquire uncle's property, Petitioner has stated using the name of his uncle as his father's name. In the circumstances, I do not find any error in the findings of fact recorded by the Respondents after giving full and adequate opportunity to the Petitioner.

9. Rule 2 of U.P. Recruitment to Services (Determination of Date of Birth) Rules, 1974, raises a presumption on the correctness of date of birth recorded in service book and the certificate of High School or equivalent examination. The deeming provision is, however, subject to the rules of interpretation of legislation which does not admit absurdity. In case of an accidental or apparent mistake or apparent absurdity, which cannot be reconciled, the presumption can be dislodged provided the Government servant is given fair opportunity of hearing. In the present case, in case the presumption is allowed to operate, it will leave apparent absurdity on record inasmuch a person born on 1.1.1953 cannot be father of a child born on 1.2.1958.

10. Petitioner has worked till the date of impugned order. Ordinarily, a person cannot be deprived of the wages earned by him for the period he has performed his work and duties. However, fraud is an exception to equity. Once it is found that Petitioner had made misrepresentation by playing fraud on the record by giving his incorrect date of birth with an attempt to gain thirteen years of service, he cannot be permitted to plead any equitable consideration in allowing him to retain the wages earned by him beyond the period he was not entitled to work.

11. The writ petition is devoid of merits and is dismissed. There shall be no order as to costs.