

(2001) 07 RAJ CK 0081

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 525 of 1997

Bundu Khan

APPELLANT

Vs

Nagar Nigam, Jaipur

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 92 FLR 44 : (2001) 3 RLW 1848 : (2001) 3 WLC 353 : (2001) 3 WLN 711

Hon'ble Judges : A.R. Lakshmanan, C.J.;Asok Parihar, J

Bench : Division Bench

Advocate : Man Singh Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Lakshmanan, C.J.—This writ appeal is directed against the order dated 4.2.1997, passed by the learned Single Judge in Writ Petition No. 4659/1996.

(2). The appellant filed the above writ petition to issue directions to the respondents herein to make payment of the full amount of pension from the date of his retirement with the amount of gratuity and commutation of pension together with the encashment of privilege leave standing at the credit of the appellant on the date of retirement with interest at the rate of 18% per annum.

(3). The petitioner appellant was employed in the services of the Municipal Council, Jaipur (Now Nagar Nigam, Jaipur) as "Bhisthi" on 7.9.1958 and continued to serve in that capacity till 27.10.1994. According to the appellant, his date of birth is 1.7.1936, but it was recorded as 1.7.1926 by mistake in the service book of the appellant by the respondents at their own record. The appellant produced a certificate of birth desired by the then Municipal Council, Jaipur, showing his date of birth as 1.7.1936 to the respondents and requested to verify the date of birth recorded in the service roll from this certificate and he be retired on the basis of this birth certificate treating the correct date of birth as

1.7.1936.

(4). The appellant also filed a suit for injunction together with the stay application on 29.6.1984 in the Court of Addl. Civil Judge (Junior Division) No. 4, Jaipur City requesting for restraining the respondents from retiring the appellant from service on the basis of incorrect date of birth i.e. 1.7.1926.

(5). The trial court, after hearing both the parties on the stay application, allowed the stay application vide order dated 4.2.1985 and ordered that the appellant be continued to work on the post held by him till decision of the suit and he be paid the salary according to the Rules.

(6). Pursuant to the aforesaid order, the appellant continued in service on the post of "Bhishti" till the disposal of the suit. The suit for injunction was dismissed on 21.9.1994 but during the pendency of the suit, deciding the issue No. 4, on the ground that the date of retirement (i.e. 30.6.1994) of the appellant had already expired during the pendency of the suit.

(7). Pursuant to the judgment of the Civil Court, the appellant was retired from service by the Commissioner (Hawa Mahal (East) Zone, on 27.10.1994, vide Annex.1).

(8). The appellant, after retirement, requested the respondent to grant him retiral benefits like pension, gratuity etc. The appellant also sent a notice for demand of justice to the respondents in this regard.

(9). Since the pension was not paid, a writ petition was filed by the appellant, which was dismissed by the learned Single Judge.

(10). The date of birth was recorded in the service book as 1.7.1926, whereas according to the appellant, it should have been recorded as 1.7.1936. On this averment, he filed an injunction suit before the Civil Court and obtained an order of injunction, which remained in force till the appellant retired from service. Ultimately the suit was dismissed on the ground that the appellant had reached the age of retirement.

(11). In our opinion, in the instant case, the respondent Municipality has itself failed to take appropriate steps to contest the suit which was filed by the appellant. As already noticed, the suit was only for a mere injunction and not for declaration for the correct date of birth of the appellant.

(12). In our view, it appears to be a collusion between the officials of the respondent-Council and the appellant. The respondents ought to have taken an immediate step to vacate the interim order and ought to have not permitted the appellant to continue in service on the strength of the interim order. In the garb of the interim order, the appellant continued in service for 10 years. In our opinion, such a suit before the Civil Court to declare the age in the form of an injunction suit is not at all competent and absolutely not maintainable and an abuse of process of law. However, the salary for the entire period has been paid

to the appellant and now, the appellant is claiming pension for the entire period, treating the said period also to be counted for commutation of the pensionary benefits. In our view, the claim now made by the appellant cannot at all be countenanced, The said period, cannot at all be computed for the purpose of pensionary benefits, taking the date of birth of the appellant as 1.7.1936, which correction was never allowed.

(13). Under such circumstances, the payment of salary for the period of 10 years pursuant to the interim order, passed by the Civil Court itself is illegal. The concerned officials of the respondent - council are responsible for the grave mistake committed by them in adopting the lethargic attitude, in not contesting the suit in the proper perspective. It has also been pointed out that the appellant retired from the post of "Bhisthi" in the year 1984, which was not a pensionable post. Thus, the claim made by the appellant is not only illegal and improper, but against the Rules also. In our opinion, this is a fit case, to take appropriate action against the officials of the respondent-council who were responsible for not conducting the suit in proper perspective and not taking appropriate action in vacating the interim order, which was obtained illegally by the appellant on the basis of wrong facts, we now declare that the date of birth of the appellant is only 1.7.1926 and it was correctly recorded in the service book of the appellant. On this basis, it is open for the municipal council to take appropriate action against the defaulting officials, which may be in the mode of recovering the amount of salary from such defaulting officials, which was incorrectly paid to the appellant on account of the interim order passed by the trial court or by way of recovering the same from the petitioner.

(14). A copy of this order, shall be sent to the Secretary, Local Self Government Department, Government of Rajasthan, Secretariat, Jaipur for further action.