
(2009) 09 AHC CK 0169
In the Allahabad High Court

District Inspector of Schools

APPELLANT

Vs

Pradumn Kumar Gaur

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Citation : (2010) 1 AWC 50 : (2009) 123 FLR 694

Hon'ble Judges : C.K. Prasad, C.J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.K. Prasad, C.J. and A.P. Sahi, J.—Respondent-appellant, aggrieved by order dated 9.11.1998, passed by a learned single Judge in Civil Misc. Writ Petition No. 26830 of 1997, has preferred this special appeal under Rule 5, Chapter VIII of the Allahabad High Court Rules.

2. Mr. M.S. Pipersenia, learned standing counsel, appears on behalf of the appellant.

3. It is not in dispute that the date of birth of the writ petitioner-respondent was recorded as 1st October, 1939 in his service book and on that basis, he attained the age of superannuation on 30.9.1997. However, after his retirement, a complaint was made that in fact, his date of birth is 1.10.1936 and, therefore, he shall not be entitled for the remuneration as also the three years' period that he had served after attaining the age of superannuation taking his date of birth to be 1st October, 1939. The learned single Judge taking into account the fact that the writ petitioner-respondent served till 30.9.1997 on the basis of his date of birth entered in his service book, directed that he shall not be asked to refund the amount of salary paid to him upto 30.9.1997, and period of service till the said date will be counted for pensionary benefits.

4. Mr. M.S. Pipersenia, learned standing counsel, appearing on behalf of the appellant, submits that the entry made in the High School Certificate is decisive and, if that is taken into consideration, the writ petitioner-respondent ought to

have been superannuated on 30.9.1994 and, therefore, direction of the learned single Judge, not to seek refund of the amount and treat the three years" period for the pensionary benefits, is illegal.

5. In the facts and circumstances of the case, we are of the opinion that the learned single Judge did not err in giving that direction. The writ petitioner-respondent continued in service till 30.9.1997 on the basis of the entry made in his service book. The service book is maintained by the employer. Not only this, the controversy in regard to the date of birth was raised after the retirement of the writ petitioner-respondent.

6. In the facts and circumstances of the case, no case for interference in this appeal is made out.

Appeal stands dismissed.