
(2004) 01 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11147 of 1992

Drig Pal Singh

APPELLANT

Vs

Director General of Police and Others

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Citation : (2004) 5 AWC 4403 : (2004) 1 UPLBEC 970

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : K.D. Tripathi, C.B. Yadav, V.C. Misra, K.M. Misra and A.K. Singh, for the Appellant; M.C. Chaturvedi, A.S.C., S.S. Sharma, S.C. and B.R. Tripathi, S.C., for the Respondent

Judgement

R.B. Misra, J.—Heard Sri C.B. Yadav, learned Counsel for the petitioner and Sri M.C. Chaturvedi, -Addl. Chief Standing Counsel along with Sri S.S. Sharma, learned Standing Counsel for the State.

2. In this petition prayer has been made to quash the order dated 6.2.1992 (Annexure-5 to the writ petition) whereby the petitioner after completing 58 years of service in consonance to his date of birth (4.5.1934 as entered in the service book and in the forms for recruitment for constable) was indicated for being superannuated with effect from 31.5.1992.

3. The petitioner entered into service in Department of Police, State of U.P. on 4.5.1954 and on his statement 4.5.1934 was recorded the date of birth in service book. According to the petition as per his High School certificate, his dated of birth is 22.9.1939 and the benefit of this date of birth entered in the High School be given and by treating the date of birth the petitioner could be retired in the year 1997 only as keeping in view the petitioner's performances in service he was given promotion from time to time from the post of constable to head constable, inspector and ultimately after 1992 he was given promotion to the post of Deputy Superintendent of Police. The petitioner is claiming service benefit on the basis of the date of birth as 22.9.1939 and for the purpose of his post

retiral benefit keeping in view the length of service and treating him to be retired on 30.9.1997.

4. The counter affidavit has been filed by the respondents, indicating that if the date of birth was entered as 4.5.1934 into service record of the petitioner at the time of joining into service is corrected in its place the date of birth of the petitioner is acknowledged as 22.9.1939, then in that case at the time of joining into service, the petitioner was only 14 years seven months thirteen days which was illegal as the minor could not be deployed in any capacity in the service of State Government. According to the respondents alteration of date of birth and dispute in the earlier date of birth as entered into the service being the disputed question of fact cannot be gone into in the writ jurisdiction as for that purpose the petitioner may file suit before the trial Court on the basis of documents, including the proof of family register, doctor's certificate, witnesses, horoscope and other evidences and with the support of medical certificate including the ossification of bones in proof of age and after detailed cross-examination and adjudication the dispute of fixing the date of birth could be resolved by the trial Court. According to the respondents the benefit of date of birth entered into the High School Certificate in reference to U.P. Recruitment of Dependents of Government Servant (Dying-in-Harness) Rules, 1974 can not be given because of the reasons indicated above as the petitioner shall have to be declared minor according to the date of birth shown in his High School certificate making the petitioner disentitled for service on 4.5.1954.

5. I have heard learned Counsel for the parties, I find that the question of alteration of date of birth by disputing the date of birth is a disputed question of fact cannot be gone into the writ jurisdiction. I find force in the above contentions of the respondents that there is no occasion to acknowledge the date of birth other than 4.5.1934 as recognised by the State Government in the service book of the petitioner. I do not find any illegality or impropriety in the order dated 6.2.1992, therefore, the relief prayed for can not be granted and petitioner was legally entitled to continue in service upto 31.5.1992 only.

6. The present writ petition is being disposed of. The petitioner was entitled for regular salary upto 31.5.1992 only. The salaries and the emoluments payable on 31.5.1992, could be considered for calculating his post retiral benefit, pension and funds etc. which could be given to him after 31.5.1992 in accordance to the law, if he approaches to the concerned authorities. Since the petitioner had served beyond 1.6.1992 to 30.9.1997 on the strength of interim order of this Court and for service rendered after 1.6.1992 he was paid salary also, whereas, he was entitled to pension and other post retiral benefit payable to him, after 1.6.1992, therefore, payment made as salary including allowances etc. over and above the due payable post retiral benefit and pension after 1.6.1992 shall be treated as excess amount is to be adjusted while finalising the pension to be paid in future. The excess payment so made shall be deducted from the post retiral benefits, pension and funds payable to him after 1.6.1992.

7. In view of the above, the writ petition is disposed of with above directions.