

(2005) 03 AHC CK 0167

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3129 of 2005

Fakharuddin

APPELLANT

Vs

Nagar Palika Parishad, Executive Officer, Nagar Palika
Parishad and Nagar Swasthya Adhikari, Nagar Palika Parishad

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Citation : (2005) 3 AWC 2966 : (2005) 2 ESC 1204 : (2005) 105 FLR 751

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; Prem Chandra and Yasharth, for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—Heard learned counsel for the petitioner as well as Sri Prem Chandra, learned counsel appearing on behalf of the respondents. A counter affidavit has been filed on behalf of the respondents. Learned counsel for the petitioner states that the petitioner does not wish to file any rejoinder affidavit. With consent of the learned counsel for the parties this writ petition is being disposed of at this stage.

2. The petitioner was in the service of respondent-Nagar Palika Parishad Sikandrabad, District Bulandshahr. He was initially appointed on a class IV post on 8.2.1966 and was thereafter confirmed in service on 1.9.1970. Admittedly in the service book of the petitioner maintained by the respondent-Nagar Palika Parishad his date of birth has been entered as 21.1.1948 and it has also been indicated that the age of superannuation of the petitioner would 21.1.2008. On 29.11.2004 the petitioner had received an order passed by Respondent No. 3 (who, according to the petitioner, is not even the appointing authority of the petitioner) wherein it has been stated that on the basis of a medical certificate which had been produced by the petitioner, he would be attaining the age of 60 years, on 7.2.2005 and thus would retire on the last day of the said month which

would be 28.2.2005. Aggrieved by the said order the petitioner has filed this writ petition with a further prayer that he may be permitted to continue in service till 21.1.2008 as per the date of birth recorded in his service records.

3. Having heard learned counsel for the parties and on perusal of record, in my opinion, this writ petition deserves to be allowed.

4. The date of birth as recorded in the service book is to be taken as final unless it is validly changed in accordance with the relevant Rules in this regard. Sri Prem Chandra, learned counsel for the respondents, has not been able to place before me any rule in accordance with which the date of birth would be treated as different from the one which has been recorded in the service book of an employee. He has placed reliance on a medical certificate, a copy of which has been filed as Annexure-3 to the writ petition, in which the petitioner's age, according to his statement as well as by his appearance, is said to be 30 years. The said certificate was issued on 7.2.1975. It is only on this ground that the respondent-authorities are treating the petitioner to be 30 years of age on 7.2.1975 and thus calculating his date of birth on such basis, the petitioner is said to have attained the age of 60 years on 7.2.2005. Just as an employee is not entitled to have his date of birth changed at the fag end of his career, the employer also cannot be permitted to change the date of birth of its employee without there being any concrete evidence for the same and that too, at the fag end of his career. The certificate on the basis of which the respondents are claiming that the petitioner has attained the age of 60 years on 7.2.2005, had been issued in the year 1975 and was on the record of the Nagar Palika Parishad. After 30 years, they cannot be permitted to unilaterally change the date of birth of the petitioner when, admittedly his date of birth had ever been, since his inception in service, was recorded to be 21.1.1948. The impugned order dated 29.11.2004 whereby the date of birth of the petitioner has been changed, thus, deserves to be set aside and is hereby quashed. The petitioner shall be permitted to continue in service on the basis of his date of birth as entered in the service book i.e. 21.1.1948. The petitioner shall be entitled to all consequential benefits.

5. Consequently, this writ petition stands allowed. No order as to cost.