(2005) 09 AHC CK 0307

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49119 of 2003

Ishwar Chandra Srivastava APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Citation : (2005) 6 AWC 6244 : (2005) 107 FLR 1015

Hon'ble Judges : V.M. Sahai, J;Sabhajeet Yadav, J

Bench : Division Bench

Advocate : K.C. Sinha, Rakesh Sinha and V.P. Shukla, for the Appellant; Y.K. Sinha, Rajiv Sharma, Dhananjay Awasthi and Sandeep Saxena and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai and Sabhajeet Yadav, JJ.—The petitioner was appointed as Head Assistant on 6.5.1973 in the office of Indian Telephone Industries Ltd., Naini Unit, Naini, Allahabad (in brief ITI). In the High School Certificate 18.4.1944 had been mentioned as his date of birth. He was promoted from time to time. The Personnel Manager, ITI issued a letter to the petitioner on 31.8.2002 that he would superannuate on the same day. The last pay drawn by the petitioner was Rs. 15800/- per month. The petitioner filled Form 10-D under the Employees Pension Scheme, 1995 and submitted it in the office of Secretary, Provident Fund Trust-II, ITI on 13.9.2002 wherein his date of birth was mentioned as 18.8.1944 and his date of superannuation was mentioned as 31.8.2002. The Secretary, Provident Fund Trust forwarded all the papers of the petitioner on 1.12.2002 to the Assistant Commissioner in the office of Deputy Regional Provident Fund Commissioner, Varanasi (in brief the Assistant Commissioner) stating therein that the petitioner''s date of birth was 18.8.1944 and he had retired after attaining the age of 58 years, therefore, superannuation pension of the petitioner be released. The Assistant Commissioner returned the pension papers on 25.5.2003 stating that in case the petitioner wanted to take pension at reduced rate, then his consent be obtained as superannuation pension was not payable to him. The petitioner on 1.6.2003 made a representation to the General Manager, ITI for making payment of his pension. This letter was forwarded by the Personnel Manager, ITI to the Secretary, Provident Fund Trust for necessary action. On 22.7.2003 the Assistant Commissioner rejected the claim of the petitioner for payment of superannuation pension and returned Form D stating that superannuation pension could not be paid.

2. The petitioner again made a representation to Secretary, Provident Fund Trust, ITI that his date of birth was 18.8.1944 and he had completed 58 years of age on 17.8.2002 and had rightly been relieved after attaining the age of superannuation 58 years on 31.8.2002 at the end of the month. The Secretary again recommended the case of the petitioner for payment of superannuation pension by certifying that the date of birth of the petitioner was 18.8.1944 and the matter of the petitioner be re-considered. The Assistant Commissioner on'' 8.9.2003 again rejected the claim of the petitioner for payment of superannuation pension on the ground that the petitioner would complete the age of 58 years in March, 2009 and thereafter he would be entitled for superannuation pension and in case the petitioner wanted to take pension at reduced rate then he should submit Form 10-D again along with his consent. It was mentioned that no other document with regard to the date of birth was admissible. The petitioner has filed this writ petition challenging the order dated 22.7.2003 and 8.9.2003. He has further prayed that the Assistant Commissioner, Provident Fund be directed to grant superannuation pension to the petitioner and pay the same along with arrears of pension with interest at the rate of 18% per annum.

3. A counter affidavit on behalf of Assistant Commissioner has been filed wherein it has been stated that ITI had submitted Form 4 (FPF) showing that the petitioner was 23 years of age on 1.3.1974, therefore, the petitioner''s date of birth had been worked out as 1.3.1951. It is further stated that an employee under the Employees Pension Scheme, 1995 was entitled for superannuation pension on attaining the age of 58 years. He could avail reduced pension after completing the age of 50 years by giving consent. According to the Assistant Commissioner the petitioner would complete 58 years of age in March 2009 and then only he would be entitled for superannuation pension. It had also been pointed out that the petitioner had joined Family Pension Scheme 1971 on 1.3.1974. It has further been stated that for correction of date of birth or age of members under the Employees Pension Scheme, 1995 a circular had been issued on 8.1.2002 which provided that the age factor was very vital in determining the eligibility for pension or quantum of pension entitlement. The change of date of birth/age should not in any way benefit the non-entitled member to get undue benefit, therefore, the authorities were to ensure the correct input of date of birth. An opportunity should be given to correct any clerical error or error apparent on facts that might have crept in the records of Employees Provident Fund Organization without the knowledge of its members. It provided the

guidelines with regard to age/date of birth. The age/date of birth in Form 2(R) would be valid only in respect of the member who joined Employees Provident Fund Membership for the first time after 16.11.1995 and it could be relied upon with regard to age/date of birth of an employee. While dealing with the pension of members of the Provident Fund exempted establishments, the date of birth/ age given in Provident Fund nomination and declaration form maintained by the Board of Trustees could be relied upon wherever the dispute arose on the date of birth/age given in Form -3 (PS)/ Form -3 (EPF). In the absence of age/date of birth given in Form 9/ F3 PS the date of birth as given by the member in Form 10-D and forwarded by the employer had to be relied. In such cases the verification of correctness of age/date of birth was to be ensured with reference to Form 5/ Form 4(PS) and Form 2. The claim of the petitioner had rightly been rejected as in Form 4 (FPF) with regard to Employees Family Pension Scheme 1971 that had been submitted by the employer with the Assistant Commissioner showing the age 23 years at the time of entry into service. Therefore, no other document could be relied upon by the respondents with regard to date of birth.

4. Another counter affidavit has also been filed on behalf of Respondents No. 2, 3 and 4, the ITI. In paragraph 23 it has been stated that till the schemes of 1971 and 1976 were in force there was no requirement to submit date of birth of the employees and approximate apparent age of the employee was sent. After the Employees Pension Scheme 1995 was enforced which was circulated to every employee and they were required to fill the declaration form which contained the date of birth of the employee. The declaration form submitted by the petitioner on 3.1.1998 in Form 2 clearly mentioned the date of birth of the petitioner as 18.8.1944 and it was sent to the Assistant Commissioner, who was required to correct the records and date of birth of the employee. It has further been stated that Secretary, Provident Fund Trust-II, I.T.I, on 1.12.2002 had sent a letter to the Assistant Commissioner, enclosing all the papers of the petitioner and informing him that the petitioner had completed the age of 58 years on 17.8.2002, his date of birth was 18.8.1944 and he retired on the last day of the month on 31.8.2002 and another letter was also sent to the same effect on 25.5.2003 for payment of superannuation pension to the petitioner. In paragraph 27 of the counter affidavit it had been stated that the Secretary, Provident Fund Trust-II, ITI had by its letter dated 8.9.2003 informed the Assistant Commissioner that the earlier form sent under the Family Pension Scheme, 1971 be cancelled as the forms were sent when the employees pension scheme 1995 was not in force. Similar letters were sent by him on 22.8.2003, 30.8.2003, 29.9.2003 and 25.11.2003.

5. It was also stated in paragraph 28 of the counter affidavit that ITI is a Government of India Undertaking and employed any employee after due verification of his date of birth and the same was entered in the service record and was taken as the basis for retiring an employee. In case of the petitioner the date of birth as recorded in the service record was the same date of birth as given in the High School certificate. The date of birth mentioned in the service

record was treated to be final for determining the tenure of service, computation of gratuity, the Provident Fund authorities should accept the same and stop further harassment of the employee and pay his superannuation pension as he has retired after attaining the age of superannuation of 58 years.

6. We have heard Sri V.P. Shukla learned counsel for the petitioner though the list has been revised, but none of the counsel for the respondents are present.

7. From the counter affidavit filed by ITI it is clear that it is a Government of India Undertaking. It appoints employees after due verification of their date of birth and records the same in their service record. The service record forms basis of the tenure of the employee and his date of superannuation. The date of birth of the petitioner mentioned in the High School certificate is 18.8.1944. It has specifically been stated that in the service records the same date of birth of the petitioner had been mentioned as is mentioned in his High School certificate. The ITI had also forwarded papers to the Assistant Commissioner, Provident Fund for payment of superannuation pension to the petitioner as he had been retired after attaining the age of 58 years. But the Assistant Commissioner had rejected Form D sent by the employer on the ground that since petitioner''s age had been mentioned to be 23 years as on 1.3.1974 as per the letter sent by the employer under the Employees Family Pension Scheme, 1971, therefore, the petitioner''s date of birth would be 1.3.1951 and he would complete 58 years of age in 2009. Since the petitioner was claiming pension before he had attained the age of 58 years, he was only entitled for reduced pension provided the petitioner was willing to give his consent. In Employees Pension Scheme, 1995 various types of pension scheme had been provided which are extracted below:-

"a) Superannuation pension: On attaining the age of 58 years; whether in service or not;

b) Reduced pension: On attaining the age of 50 years but below 58 years and left the service;

c) Disablement pension: Left service on account of total and permanent disablement in service;

d) Widow and Children pension: On the death of member;

e) Orphan pension: On the death of parents or on remarriage of the spouse after the death of the member; and

f) Nominee pension: On the death of a member and in the absence of spouse and eligible children below 25 years on the date of death of the member."

8. From the aforesaid scheme it is apparent that where an employee is superannuated at the age of 58 years he is entitled for superannuation pension. According to ITI the petitioner had retired after attaining the age of 58 years on 31.8.2002 whereas according to Assistant Commissioner, he would attain the age of superannuation 58 years in March, 2009. It is necessary to refer to the circular

dated 8.1.2002 that has been filed as Annexure-2 to the counter affidavit which had formed the basis for rejecting superannuation pension claim of the petitioner.

9. We have gone through the aforesaid circular very carefully. It clearly provides that the age/date of birth mentioned in Form 3(PS)/ Form 3 (FPF), Form 9, Form 5/ Form 4 (PS) and Form 2 has to be accepted as correct. For rejecting the claim of the petitioner the respondents are relying on Form 4(FPF) which had been filled under the Employees Family Pension Scheme, 1971. This Form 4 (FPF) mentioned in circular dated 8.1.2002. Therefore, the age given in Form 4 (FPF) could not be relied upon by the respondents for rejecting the claim of the petitioner for payment of superannuation pension. There is no other material with the respondents for rejecting the claim of the petitioner.

10. Further the circular dated 8.1.2002 provides that the date of birth mentioned in Form 2 has to be accepted. The employer ITI has filed a copy of Form 2 as Annexure-1 to the counter affidavit that had been sent to the Assistant Commissioner, wherein the date of birth of the petitioner as 18.8.1944 had been mentioned. Therefore, this entry made in Form 2 was binding on the Assistant Commissioner and he could not have refused to make payment of superannuation pension to the petitioner who had retired on 31.8.2002 after attaining the age of superannuation of 58 years.

11. We are further of the opinion that when ITI, the employer is certifying on the basis of the service record that the date of birth of the petitioner was 18.8.1944, it was not open to the Assistant Commissioner to enhance the date of superannuation from 31.8.2002 to year 2009. The petitioner is entitled for payment of superannuation pension as he has retired after attaining the age of 58 years.

12. In the result, the writ petition succeeds and is allowed. The orders dated 22.7.2003 and dated 8.9.2003 passed by Respondent No. 5, Annexures-10 and 13 to the writ petition, are quashed. A writ of mandamus is issued directing the respondents to correct their records and release the pension of the petitioner treating his date of birth as 18.8.1944. Respondent No. 5 is directed to release the pension of the petitioner including arrears of pension w.e.f. 1st September, 2002 within a period two months from the date a certified copy of this order is produced before him. It is further provided that if the pension of the petitioner is not released by respondent No. 5 within a period of two months, the petitioner shall be entitled to interest @ 8% with quarterly rest on the amount of pension which has to be paid. The interest payable to the petitioner shall be recovered by Commissioner, Provident Fund, Head Office, Kanpur from the personal funds of employees and officers who are ultimately found responsible for delay in payment of pension of the petitioner.