

(1976) 05 AHC CK 0044
In the Allahabad High Court
Case No : Writ Petition No. 1112 of 1975

Jhandeshwar Prasad Dwivedi

APPELLANT

Vs

The Chief Engineer, P.W.D., U.P., Lucknow and Others

RESPONDENT

Date of Decision : 17-05-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 — Rule 2

Citation : AIR 1977 All 174

Hon'ble Judges : Prem Prakash, J; Hari Swarup, J

Bench : Division Bench

Advocate : H.D. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Swarup, J.—The petitioner has been superannuated. The petitioner's contention is that his date of birth had been wrongly recorded in the High School Certificate and accordingly the order of superannuation is erroneous. The date of birth, as given in the High School Certificate, is 5th May, 1917, while according to the petitioner, he was born on 5th May, 1919. In view of the U. P. Recruitment to Services (Determination of Date of Birth) Rules, 1974 however, the date of birth given in the High School Certificate is final. Rule 2 provides:

"The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a Government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time of his entry into Government service, shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever."

In view of this Rule, the order of superannuation cannot be deemed to suffer from any error of law.

2. Learned Counsel then urged that a mandamus be issued to the Board of High School and Intermediate Education to correct the date of birth in the High School Certificate because the Board had refused to entertain the matter on the ground that the matter was being raked up after the lapse of forty years. According to him, the entry of wrong date in the Certificate is due to a clerical error and can always be corrected. There is no doubt that a person who makes the mistake can correct the mistake. It is, however, not possible from the facts in the present case to infer that the mistake in the High School Certificate issued in the year 1935 occurred due to any mistake of the Board. There is no allegation in the petition that the petitioner had shown his date of birth in the application form for appearing in the Board's High School Examination as 5th May, 1919 and not as 5th May, 1917. In the absence of any such allegation, it cannot be said that the Certificate issued by the Board contains any clerical error or any error caused by the mistake of the Board.

3. On effect, the argument of the learned counsel is that the Board should, on the basis of the evidence, which the petitioner might produce before the Board, such as the entry in the scholar's register and the statements of his father and uncle made in some cases in Courts of law, give a finding that the petitioner was born in 1919 and not in 1917 and then correct the entry in the Certificate. If this is to be done, it will amount to adjudication and not correction of clerical error. no provision of law has been shown under which the Board has either such a power or such a duty. Even if it may be permissible for the Board to make the correction, unless a duty is cast by law on the Board to adjudicate and determine the correct date of birth of a person who takes up the examination no mandamus can issue to the Board to enter into an enquiry and correct the High School Certificate.

4. The petition accordingly has no merit and is dismissed.