

(2023) 10 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 805 Of 2019

Khalida Bano

APPELLANT

Vs

State Of J&K & Others

RESPONDENT

Date of Decision : 07-10-2023

Acts Referred:

Citation : (2023) 10 J&K CK 0012

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Insha Rashid, Syed Musaib

Final Decision : Allowed

Judgement

Rajnesh Oswal, J

1) The petitioner was initially appointed as Junior Assistant vide Government Order No.SDA/VC/EST/382-90 dated 03.05.1988 and she claims to have performed her duties to the best of her ability while being posted at various places. It is stated that when the petitioner was appointed, due to some clerical error, her date of birth in the service record was mentioned as 07.03.1959 instead of 07.08.1959. When the petitioner came to know about the mistake in her service book, she immediately submitted a representation for correcting her date of birth and remained under impression that the necessary correction has been made and her date of birth has stands corrected in the service book but later it was found that due to inaction on the part of the concerned official, the mistake was still subsisting in the record. The petitioner moved another application/representation for rectifying her date of birth and the same was forwarded to JKBOSE for its verification. Vide reference No.W-1455 dated 18.01.2012, the Board confirmed her date of birth certificate to be genuine. Thereafter, the respondents rectified the date of birth and made necessary corrections in the service book of the petitioner and while issuing a final seniority list of non-gazetted staff of SDA vide notification No.SDA/VC/123 of 2017 dated

08.08.2017, the date of birth of the petitioner was mentioned as 07.08.1959.

2) The petitioner has filed the present petition for quashing order dated 30.03.2019 wherein it was observed that the petitioner was due to retire on 31.03.2019 and further prayer has also been made for directing the respondent No.3 to allow the petitioner to perform her duties till her actual date of retirement i.e. 07.08.2019, on the ground that the petitioner has to perform her duties till the date of her actual retirement as per the service book and the seniority list issued by the respondents. It is also stated that she cannot be retired arbitrarily as the respondents have rectified her date of birth after proper verification.

3) The response stands filed by the respondents stating therein that the date of birth recorded in the service book of the petitioner at the time of appointment was 07.03.1959 and as per Article 35-A of the J&K Civil Service Regulations, the petitioner was required to apply for alteration of date of birth within five years of her appointment, which she failed to do and it was only in the year 2008 and 2018 that the petitioner applied for correction of her date of birth. It is further stated that the application filed in the year 2008 for correction of date of birth was considered, processed and finally a decision was taken not to change the date of birth of the petitioner, as the petitioner had submitted the application beyond five years of her appointment. It is also averred that the petitioner was allowed to continue in the light of the order dated 09.04.2019 passed by this Court.

4) The petitioner has filed rejoinder affidavit to the response filed by the respondents stating therein that the respondents have narrated a sham and false story that the petitioner had not approached the respondents for rectification of date of birth in service book within time, as the petitioner had filed an application in the year 1990 and not in the year 2008, for rectification of date of birth in her service records and further that the date of birth of the petitioner in the record of the J&K Board of School Education is also 07.08.1959.

5) Ms. Insha, learned counsel for the petitioner, drew the attention of this Court towards the application filed by the petitioner on 02.05.1990 whereby she had requested the Executive Engineer, B.C. Division 1st, SDA, Srinagar, for rectification of her date of birth as 07.08.1959. She further submitted that in the service record of the petitioner, the date of birth of the petitioner was rectified as 07.08.1959 in place of 07.03.1959.

6) Per contra, Mr. Syed Musaib, learned counsel for the respondents, submitted that the claim of the petitioner for rectification of date of birth was rejected in the year 2008 itself, when it was observed that the application for rectification of date of birth was filed by the petitioner beyond the period of five years as provided in Article 35-A of J&K CSR.

7) Heard and perused the record including the original service book of the petitioner produced by learned counsel for the respondents.

8) The perusal of the record reveals that the petitioner was appointed as Junior Assistant vide Government Order dated 03.05.1988. The perusal of Annexure-IV relied upon by the petitioner, reveals that on 02.05.1990, the petitioner filed an application before Executive Engineer, B.C. Division 1st, SDA, Srinagar, for rectification of her date of birth in the service record as 07.08.1959 instead of 07.03.1959. The said application was forwarded to the Secretary, Srinagar Development Authority, vide endorsement No.SDA/EE/78 dated 09.05.1990. During pendency of this petition, this Court vide order dated 10.05.2023 directed the respondents to respond to Annexure-IV annexed with the petition. The respondents in their response stated that the matter was looked in to and it has been reported that there is no record available in Srinagar Development Authority in respect of Annexure-IV and the record being very old might have been damaged in the floods of 2014. While examining the record produced by the respondents, this Court found that similar observation has been made by the Record Keeper. The report of Record Keeper is reproduced as under:

Subject: Hon'ble High court Order Dated 07/04/2023 passed in SWP No. 808/2019 titled Khalida Banoo v/s State of J&K & ors Civil Suit.

Regarding the subject, this is to convey that the Annexure IV annexed with the writ petition of the petitioner regarding the representation dated.9/05/1990 as reflected in the Hon'ble Court order dated 07/04/2023, it transpires from the photocopy of the annexure IV that the said representation was submitted to Ex. Engineer B. C Div, Ist, SDA and the same was forwarded to Secretary, SDA vide no. SDA/EE/78 dated 09/05/1990. It is also pertinent to mention here that after verifying from the available records, the said representation (Annexure IV) is not available in the Accounts wing.

9) It is not the stand of the respondents that the application filed by the petitioner in the month of May 1990, was either not filed or was managed subsequently but the concerned Record Keeper has simply observed that after examination of the records it was found that the said representation was not available. Further perusal of the original service book of the petitioner reveals that the initial the date of birth of the petitioner was mentioned as 07.03.1959 but the same was subsequently rectified as 07.08.1959. This rectification of date of birth in the service book of the petitioner is contrary to the stand of the respondents that her request to alter the date of her birth was rejected in the year 2008 itself.

10) Be that as it may, once the petitioner had filed an application for rectification of her date of birth as 07.08.1959 in the month of May, 1990 i.e. within a period of two years of her appointment, it was obligatory on the part of respondents to rectify her date of birth which was duly substantiated by the certificate issued by the J&K Board of School Education. As already noted above, the necessary correction has already been made in the service book of the petitioner.

11) In view of the above, the writ petition is allowed. The impugned order dated

30.03.2019 is quashed and since as per the own admission of the respondents, the petitioner has continued to work even after 31.03.2019 though pursuant to the interim direction of this court, the respondents are directed to release the salary and other emoluments in favour of the petitioner as admissible under rules by considering her date of retirement as 07.08.2019 as mentioned in her service book.

12) The record be returned to learned counsel for the respondents.