
(2006) 08 AHC CK 0221
In the Allahabad High Court
Case No : C.M.W.P. No. 15548 of 2006

Mahmood Ali

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Citation : (2006) 7 ADJ 545 : (2008) 6 AWC 5567

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Kumar Anish, for the Appellant; M.D. Singh "Shekhar", S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The Petitioner has filed this petition against an order dated 28.2.2006, passed by the Executive Officer, Nagar Palika Parishad, Deoband, Saharanpur (Respondent No. 2) informing him that he was being retired from service with immediate effect.

3. The facts of the case, in brief, are that the Petitioner was appointed as Peon on 14.5.1969 in the Nagar Palika Parishad, Deoband, Saharanpur and was confirmed on 11.8.1970. According to his service book his date of birth is 12.8.1946 and he was due to retire on 31.8.2006. A complaint was made by one Smt. Kamla to the District Magistrate, Saharanpur that the date of birth of the Petitioner according to the record of Group Insurance Scheme 4912 for the years 1996 to 2005 is 12.8.1942.

4. The District Magistrate called for a report from the office of Nagar Palika Parishad, Deoband.

5. On receipt of the report the District Magistrate found that the date of birth of the Petitioner recorded therein was the same as is recorded in his service book,

i.e., 12.8.1946. However, the Executive Officer, Nagar Palika Parishad, Deoband passed the impugned order dated 28.2.2006.

6. The dispute in this writ petition is regarding date of birth. According to the Petitioner his date of birth in the service record is 12.8.1946 which is also evident from the impugned order according to which he was to retire on 31.8.2006 retiring the Petitioner with immediate effect.

7. It appears from the perusal of the impugned order that the stand taken by the Respondents is that in the insurance policy under Group Insurance Scheme 4912 of the Petitioner his date of birth is recorded as 12.8.1942 according to which the Petitioner ought to have been retired on 31.8.2002. It further appears that in pursuance of letter dated 15.5.2004 of the Director, Local Bodies, U. P., Lucknow verification of date of birth of the Petitioner was made and it was found that there was difference in the date of birth of the Petitioner in the records of service book and the insurance policy under Group Insurance Scheme 4912 and as such by the impugned order dated 28.2.2006 the Petitioner was retired with immediate effect taking his date of birth as 12.8.1942. The impugned order is as under:

8. In so far as the date of birth as recorded in the insurance policy under Group Insurance Scheme is concerned, the learned Counsel for the Petitioner states that it is the employer who sends the particulars of its employees for the purposes of Group Insurance Scheme and a mistake might have occurred in sending his particulars with regard to date of birth, but in any case the date of birth recorded in the service book is to be taken as authentic date of birth. He further submits that the authority has not given any reason for disbelieving the date of birth of the Petitioner as 12.8.1946 which has been recorded in his service book and believing the date of birth recorded in the insurance policy under the Group Insurance Scheme.

9. Sri M. D. Singh Shekhar has vehemently urged that since there is overwriting in the date of birth of the Petitioner in the service book the date of birth recorded therein cannot be relied upon.

10. The Petitioner has also appended the photostat copy of his service book as Annexure-1 to the writ petition. From the perusal of the photostat copy of the service book and the original service book produced by Sri M. D. Singh Shekhar, learned Counsel for the Respondents, it is apparent that the date of birth of the Petitioner is 12.8.1946 which has been shown in figures as well as in words. However, it appears that in the words there is some over-writing done in the year of date of birth by writing ""six" over the earlier word. It appears that to remove doubt, full date of birth in words 12.8.1946 has again been written below it as "Twelfth August Nineteen Forty Six" just below the figures with a note that the Petitioner has been appointed on 14.5.1969 and is to retire on 31.8.2006.

11. Having heard learned Counsel for the parties and on perusal of the original record as well of the service book of the Petitioner, I am of the opinion that the

date of birth recorded in figures is clearly written as 12.8.1946, however in the words there is some over-writing in the year. It appears that while writing in words there may have been written wrong year by inadvertence which appears to have been corrected by making over-writing as in the figures the date of birth of the Petitioner has been clearly written as 12.8.1946 without any over-writing.

12. The Petitioner has already worked upto 28.2.2006. Since he has already worked till 28.2.2006 and has illegally been retired early in pursuance of the impugned order, he shall be deemed to be in service till 31.8.2006, i.e., his actual date of retirement. The Petitioner shall be paid all his salary from March, 2006 onwards as well as pensionary benefits taking his date of retirement as 31.8.2006 within two months from the date of production of a certified copy of this order.

13. For the reasons stated above, the petition is allowed. No order as to costs.