

(1994) 07 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 10520 of 1988

Musafir Ram

APPELLANT

Vs

Banaras Hindu University,through Vice Chancellor

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Citation : (1994) 07 AHC CK 0038

Hon'ble Judges : N.L.Ganguly, J

Final Decision : Allowed

Judgement

N. L. Ganguly, J.—The petitioner was a confirmed Class IV employee in the Benaras Hindu University. He started working in service since 1946. He was not High School passed at the time of joining of the service. The Engineer of the University of Public Works Department by a letter, dated 29101971 asked the petitioner and other ten Class IV employees working in the department to furnish the High School certificate in original along with an attested copy or any other educational qualification certificate furnishing the correct date of birth for record of the Kul Sachiv Prashasan. It was also stated in the said letter that in case it was not possible to furnish the educational certificate the explanation for inability of furnishing the same may be stated so that the age may be determined by the Chief Medical Officer, Banaras Hindu University. Again another letter dated 17111973 was sent by the Deputy Registrar (Admn) to the petitioner and five other persons asking them to furnish the certificate of age In case they do not submit the age certificate, a Medical Board would be constituted for the purposes of determining the age. The petitioner, since was not High School pass nor had any educational certificate from any institutions, was sent before the Medical Board for examination in order to ascertain the correct age. The Medical Board determined the age of the petitioner as on 411974, to be 46 years.

2. Thus on calculation as per the age determined by the Medical Board the petitioner's date of birth would be 411928. The communication of age, as determined by the Medical Board, was sent by the Registrar (Admn) to the

petitioner, which has also been annexed as Annexure4 to the writ petition. The petitioner received a letter from the University Engineer, Banaras Hindu University dated 19/2031984, by which the petitioner was said to reach the age of superannuation on 1391984. A copy of the said letter is annexed as Annexure5 to the writ petition. The University Engineer by letter dated 2791984, wrote to the President of the nonteaching Association of the Banaras Hindu University that the service book of the petitioner was recovered and has been sent to the Deputy Registrar (Admn) with the office letter dated 271983. It is admitted that according to Order 11, of the Ordinance governing the terms and conditions of services of all the employees other than teachers i.e. Class IV the age of superannuation is 60 years. Since the petitioner was retired by the respondents w.e.f. 1391984, the petitioner under mistaken legal advice filed a civil suit before the Munsiff's Court, Varanasi seeking injunction not to retire the petitioner. The said suit was withdrawn and the present writ petition has been filed before this court for quashing the order of retirement passed by the letter dated 19/2031984. Annexure5 to the writ petition.

3. The sole ground challenging the order of retirement is that the petitioner could not be retired on the basis of the alleged recorded age in the service book. The petitioner's learned counsel submits that the petitioner admittedly is not High School pass nor there was any educational certificate showing his age. He submitted that it was the respondents, who themselves directed the petitioner to appear before the Medical Board for ascertaining the age solely on the ground that there was no age certificate or High School certificate available. The learned counsel submits that it was the respondents who got the age of the petitioner ascertained by the Medical Board, found it to be 46 years on 411974. which shows that the date of birth of the petitioner comes to 411928. The respondents are bound by their own record which shows that the petitioner's date of birth is 411928, and he was to retire after completion of 60 years service i.e. on 311988. The learned counsel for the University Sri Sidheshwari Prasad, submitted that various records concerning the petitioner in the University show that the petitioner is not illiterate. On the contrary he can read and write. The learned counsel for respondents does not controvert or deny the fact that the letter dated 1711973 was issued by the respondents directing the petitioner to appear before the Medical Board. Sri Sidheshwari Prasad submits that it was discovered later that the petitioner himself had declared his date of birth as 1841924, which fact was recorded in the service book and accordingly the petitioner was retired on 1741984. This fact is denied by the petitioner in his rejoinder affidavit. The petitioner in his rejoinder affidavit reiterated the fact that he never declared his age as said by the respondents.

4i The learned counsel for the petitioner placed reliance on a case reported in 1985 U.P. Service Cases (N) 112Hafizan v. U.P. Board of Basic Education and others., It is held in the said cases that the age could be determined either on the basis of the entries in the service book or the medical certificate. When the departmental authority referred the petitioner for medical examination it was not

open to the authorities not to act on the medical certificate so obtained and have reliance on the entry in the service book. The facts of the present case and the case cited are practically on the same footing. The petitioner never averred or gave any age certificate himself nor he declared his age, as stated, to be recorded in the service book. If the service book of the petitioner was available and in possession of the respondents, the respondents should not have asked the petitioner to furnish the High School Certificate or educational certificate showing the age. It was the respondents who had asked the petitioner to appear before the Medical Board so that his age be determined. The petitioner complied with the directions of the respondents and his age was found to be 46 years on 4/1/1974. This document was in fact got prepared by the respondents themselves ten years prior to the alleged date of retirement of the petitioner. The petitioner cannot be blamed that he played any mischief or got his age determined himself soon before his attainment of retiring age. The respondents are estopped by their conduct and they cannot be permitted to alter the age of the petitioner on the basis of such a document which was never available nor ever attempted to be relied on by them before getting the age of the petitioner determined by the Medical Board.

5. In view of the aforesaid facts I am of the view that the order retiring the petitioner in 1984, is absolutely illegal and liable to be quashed. Since the petitioner has retired according to the age, as found by the Medical Board on 31/1/1988, no order for his reinstatement is called for. The petitioner, however, is entitled to receive the salary from the date of his retirement in 1984 to 31/1/1988, as admissible to him under rules. If the petitioner has received some amount from the respondents by way of pension during the said period, the same shall be adjusted towards the amount payable to him as salary and the balance amount shall be paid to the petitioner within three months from the date of presentation of a certified copy of this judgment before the respondents. The respondents are further directed that they shall pay the postretirement benefits to the petitioner w.e.f. 4/1/1988 onwards according to law.

6. The petition is allowed with costs.