
(2003) 08 AHC CK 0215
In the Allahabad High Court
Case No : C.M.W.P. No. 19938 of 1996

Naazim Hussain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Citation : (2003) 6 AWC 5020

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Shamimul Hasnain and S.K. Mishra, for the Appellant; Ashok Kumar, P.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for parties.

2. The Petitioner has challenged validity and correctness of impugned order dated 21.3.1996 (Annexure-4 to the writ petition). By the aforesaid order, the Petitioner has been ordered to retire on 30.6.1996 treating his date of birth as 16.12.1936. The Petitioner claimed that his date of birth is 1938 and he has wrongly been retired from service.

3. Brief facts of the case are that the date of birth of the Petitioner according to the entry made in the service book is 16.12.1938. It is said that one Gaya Prasad made a complaint that the Petitioner had wrongly given his year of birth as 1938, though he was born in the year 1936. The order impugned in the writ petition recites inter-alia that from the records of the concerned Nagar Palika, it has transpired that the Petitioner was born in the year 1936. The Petitioner was accordingly informed that he would superannuate on 30.6.1996.

4. According to the Petitioner, he immediately made two representations on 27.3.1996 and 2.4.1996 disputing the correctness of the allegations in the impugned order but no decision on his representations was taken. It is also the case of the Petitioner that before termination of his services he has neither

afforded any opportunity of being heard nor he was given any notice before passing the impugned order and was not even informed about the results of the inquiry which is alleged to have been made by the Respondents. It is further submitted that even according to the date of birth which is stated to be 16th December, 1938 irrespective of the dispute whether he was born in the year 1936 or 1938, he cannot be superannuated before 15.12.1996 on the basis of Respondents own case.

5. An interim order was granted to the Petitioner on 26.6.1996 by which operation of the impugned order dated 21.3.1996 was stayed until 29.7.1996, further directing that Respondent No. 2 the Chairman, Nagar Palika Parishad, Fatehpur to decide the representation of the Petitioner in the meanwhile by a speaking order after affording an opportunity of being heard to the Petitioner.

6. The case of Respondents is that the Petitioner was appointed as fitter in Nagar Palika, Fatehpur w.e.f. 16.12.1996. At the time of joining of his service, the Petitioner had not given particulars about his date of birth and had only given his year of birth as 1936 which was recorded in his service book as well as in character roll and other service records. It is further submitted that the Petitioner managed to manipulate entries in the service book and other records showing his date of birth as 16.12.1938 except in the character roll in which the entry pertaining to the date of birth of the Petitioner continued to be as 1936.

7. An application to amend the relief was filed and has been allowed by this Court vide order dated 14.7.2003 as counsel for the Respondents did not oppose the same. By the amendment application following reliefs have been sought which are as under:

(v) To issue a writ of certiorari quashing the alleged ex parte order dated 25.7.1996 passed by Respondent No. 2.

(vi) To issue a writ of mandamus commanding Respondent Nos. 2 and 3 to pay the arrears of salary since July, 1996 till the date of retirement treating 16.12.1938 as his date of birth.

(vii) To issue a writ of mandamus commanding Respondent Nos. 2 and 3 to pay the post retiral benefits forthwith.

8. From the amendment application it appears that the order dated 25.7.1996 deciding representation of the Petitioner was never served by the Petitioner and further that Respondent Nos. 2 and 3 continued to take work from him till December, 1998 and charge was taken from him on 1.2.1999 and further that salary of the Petitioner since July, 1996 has not been paid nor his post retiral benefits have been paid.

9. The alleged manipulated entries in the service book/records are said to have come to light when a complaint dated 13.2.1996 was received and inquiry was made in the matter. In the inquiry it was revealed that the Petitioner himself had made the complaint dated 13.2.1996 in a pre-planned manner in the name of a

non-existent person, Gaya Prasad so that authorities may have passed some orders regarding the date of birth of the Petitioner providing him with a cause of action for challenging the same before the Court, if the orders are adverse to his interest. This manipulation is said to have been done by the Petitioner when he was informed that he has to retire treating his date of birth as 1936.

10. The standing counsel submits that character roll of the Petitioner is a confidential record and is never handed to an employee whereas service book is given to the employees to ratify entries made therein, hence it is possible to interpolate the entries in the service book but not in the character roll in which date of birth is also mentioned.

11. The representation of the Petitioner dated 27.3.1996 and 2.4.1996 filed by him are said to have been decided by the authorities vide order dated 25.7.1996 in compliance of the order of this Court dated 26.6.1996, rejecting the claim of the Petitioner.

12. The Petitioner in the rejoinder-affidavit has denied the allegation made by the Respondents and states that entry regarding date of birth in the service book was not changed by him and character roll of class I Vth employees in Nagar Palika is not prepared. He also states that date of birth mentioned in his L.I.C. policy is 16.12.1938 which was taken as far back as in the year 1978 on the basis of entry in his service book and as such the impugned order is illegal. It is further stated in the rejoinder-affidavit that the Petitioner continued to work during the period 8.10.1996 to 16.12.1998 and he is entitled to salary and the post retirement benefits on basis that, he has worked during the aforesaid period.

13. It is submitted that the impugned order is against the principles of natural justice as no inquiry was conducted and no opportunity of hearing was given to him while deciding representation of the Petitioner.

14. Admittedly order dated 25.7.1996 passed by Respondent No. 2 has not been served on the Petitioner and, as such, has not been filed in the petition, hence it cannot be quashed. It is also apparent from the record and the contention of the parties that the Petitioner has worked till December, 1998 and charge has been taken from him on 1.2.1999 and that no opportunity whatsoever has been given to the petitioner.

15. In view of aforesaid reasons and in peculiar facts of the case, the writ petition succeeds and is allowed and the impugned order/notice dated 21.3.1996 is quashed. As the Petitioner has already attained age of superannuation, it is directed that the Respondents shall pay his salary if not paid already for the period 8.10.1996 to 1.2.1999 when the charge was taken from him. It is further directed that the retiral benefit of the Petitioner shall be computed by the authorities on the basis that he had retired on 1.2.1999, on attaining the age of superannuation within six months of the production of certified copy of the judgment.

16. No order as to costs.