
(2024) 06 UK CK 0125

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1056 Of 2024

Nazir Ali

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 24-06-2024

Acts Referred:

Citation : (2024) 06 UK CK 0125

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Sanjay Kumar, S.M.S. Mehta, T.A. Khan, Vinay Bhatt

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Heard learned counsel for the parties.
2. By means of this writ petition, petitioner has challenged the order/letter dated 07.05.2024, annexure-7 to the writ petition, issued by respondent no.3, whereby the petitioner was informed to complete his pension paper, as he is going to attain 58 years of age on 21.04.2024. Petitioner, feeling aggrieved by the aforesaid order, is before this Court for the reason that according to the petitioner, his date of birth is 22.04.1970 and according to that, petitioner, is at present only 54 years of age.
3. Petitioner applied to the respondent no.4 to release his retention allowance of 2021-2022 (the last financial year) which was stopped by the respondent only for the reason that the petitioner could not submit his birth certificate.
4. Learned Senior Advocate appearing for respondent no.3 submits that under the provisions of Standing Orders Covering the Condition of Employment of Workmen in Vacuum Pan Sugar Factories in U.P., and according to Standing Clause LL, it is provided that any dispute with regard to the date of birth of workman working with the respondent-Sugar Mill can be resolved by the Labour

Commissioner and for that purpose, the petitioner can file an application along with the proof of his date of birth to the Labour Commissioner who shall pass the appropriate order after affording opportunity of hearing to both the parties.

5. Clause LL of the Standing Orders Covering the Condition of Employment of Workmen in Vacuum Pan Sugar Factories in U.P. as applicable to the State of Uttarakhand is quoted hereinbelow:-

"LL. Retirement of Workman on reaching the age of superannuation

1. A workman may be retired from service on reaching the age of superannuation which shall be 58 years.

2. The Provident Fund record of the factory specifying the workman's age should to begin with, be taken as the reliable record of the age of a workman for purpose of retirement.

3. This record of age will stand modified as may be warranted by the following:

(a) Date of birth as given in the school leaving certificate or the High School Certificate.

(b) Date of birth as certified by a Municipal Board, a Cantonment Board, a Notified Area or a Town Area Committee.

(c) An insurance policy taken before November 1, 1960.

(d) Junior High School (VIII Class) Certificate (to be applicable in the case of future entrants only):

(i) Where the date, month and the year of birth of a workman are recorded in Provident Fund records, the date of birth as given in the Provident Fund records shall be taken as final;

(ii) Where only the month and year of birth are given the date will be taken as the first of the month; and

(iii) Where the Provident Fund record of the workman does not specify the date or month of birth in that case the 1st November of the year shall be deemed to be the date of retirement.

4. The management shall give at least one month's notice to a workman before retiring him and during this period the workman shall have the right to represent to the Labour Commissioner, U.P. Kanpur. Such representation shall normally be disposed of within a period of six weeks of the date of receipt of representation from the workman and the orders passed by the Labour Commissioner, U.P. regarding the question of age of the workman shall be final and shall not be questioned by any party before any court. In case the Labour Commissioner, U.P., allows the representation, the employers, shall reinstate the workman immediately on receipt of the said orders and also pay to him full wages for the period of involuntary unemployment.

5. In the event of a workman retiring during the off-season he shall be paid retaining allowance up to the date of retirement.”
6. In view of the aforesaid provisions, the writ petition is allowed. Petitioner is given a liberty to move an application to the Labour Commissioner, Uttarakhand along with proof of his date of birth and the Labour Commissioner, Uttarakhand shall decide the same within a period of three months from the date of filing of such application, after affording due opportunity of hearing to both the parties.
7. Pending application, if any, stands disposed of accordingly.