

(2002) 10 AHC CK 0116

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2229 of 1994

Phoolmani

APPELLANT

Vs

Regional Deputy Director of Education (Second), Fourth
Region, Allahabad and Others

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(z)

Citation : (2002) 10 AHC CK 0116

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

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

2. The petitioner was working as ClassIV employee in Hindu Mahila Inter College Allahabad, which is a recognised girls school. Her date of birth as recorded in servicebook is 1181931. She submitted a birth certificate issued by the Nagar Mahapalika, Allahabad in 1982 in which her date of birth was recorded as 11121941. She also submitted a Notary Certificate to the effect that the date of birth recorded in her servicebook was incorrect and the date of birth recorded in the certificate issued by the Nagar Mahapalika certificate is correct.

3. The Principal of the institution issued a letter dated 471991 informing the petitioner that she would be retiring on 3181991 according to the date of birth recorded in her service book, hence she should submit her papers for pension etc. On receipt of the letter, the petitioner submitted an application requesting that she may be continued in service till she attains the age of superannuation according to Nagar Mahapalika certificate. She further requested the Principal to have her examined by the C.M.O. in case there was any doubt in her age.

4. When there was no response to her application, the petitioner moved this Court by means of writ petition No. Nil of 1991, which was finally disposed of by

judgment and order dated 2571991 with the direction to the Principal to decide her representation. In pursuance of the aforesaid judgment and order dated 2571991, the Principal of the institution decided the representation of the petitioner, inter alia, holding as under:

(i) According to the G.O. dated 1981978 once the date of birth is recorded in the service book, it cannot be subsequently changed. The date of birth of the petitioner mentioned in the service book i.e. 1181931 is correct and authenticated by her thumb impression.

(ii) In paragraph 4 of the affidavit of the Notary she has stated on oath that her date of birth is 1181931 and no other date of her birth is recorded in any other document.

(iii) In the option form submitted by her for purpose of pay scale on 171979, she has given her date of birth as 1181931 and also signed on the option form at various places giving her date of birth as 1181931.

(iv) Smt. Phoolmani had given her date of birth as 1181931 in the papers submitted by her to the education department, which were forwarded before 141971 and that Nagar Mahapalika Certificate submitted by the petitioner is not a corrigible document for changing her date of birth in the service book.

5. The petitioner again filed Writ Petition No. 24690 of 1991. This Court by an interim order dated 3081991 restrained the respondents from retiring the petitioner. The writ petition was decided on 1121992 after exchange of counter and rejoinder affidavits and it was held:

?In view of the above discussion, I dispose of the writ petition with an observation that if the petitioner prefers an appeal to the Committee of Management within a period of two weeks from today, the Committee of Management shall treat the appeal as if it has been filed within time and dispose it of in accordance with law within a period of six weeks from the date of receipt of the appeal along with a certified copy of this order. It is made clear that in case the decision of the Committee of Management goes against the petitioner, she may prefer a representation before the Regional Inspectress of Girls Schools, who shall decide the same in accordance with law and after affording opportunity of hearing within two months from the date of receipt of representation.?

6. In pursuance of the above Court's order dated 1121992 the petitioner filed an appeal before the Committee of Management, which directed her to produce the birth certificates of her brothers and sisters within a week. She then moved an application before the Principal requesting for time till 2031993 to produce the aforesaid certificates, but no time was granted to her and the Committee of Management decided the appeal against the petitioner. Against the order of the Committee of Management the petitioner filed a representation before Respondent No. 1 on 2391993. He after hearing both the parties decided the

representation against the petitioner by an order 3121993. Aggrieved by it, the petitioner filed the present writ petition.

7. This Court vide judgment and order dated 1121992 passed in Writ Petition No. 24690 of 1991 Phoolmani v. State of U.P. and others, has held that the Government Order No. 1864/81350(16/77) dated 1981978 has no application against the petitioner as she is not a Government employee. The petitioner was an employee of recognized institution managed by a private committee of management, hence was a workman within the meaning of Section 2(z) of the U.P. Industrial Disputes Act, 1947. She has raised a disputed question of fact in this writ petition, which cannot be adjudicated except by adducing oral and documentary evidence. The question of retirement of the petitioner on the basis of alleged incorrect date of birth in her service records falls within the realms of the labour Court which provides for adjudication in respect of relief claimed by her. This Court cannot adjudicate such disputed questions of fact in exercise of its powers under Article 226 of the Constitution of India, which require oral and documentary evidence. In these circumstances it would be proper to relegate the petitioner to the alternative and efficacious remedy available to him before the labour Court.

8. The writ petition is dismissed accordingly on the ground of alternative remedy. No order as to costs.

9. It is, however, provided that in case the petitioner raises an industrial dispute, the same shall be referred by the competent authority before the labour Court concerned and shall be decided expeditiously in accordance with law read with Rule 12 of the U.P. Industrial Disputes Rules, 1957, preferably within a period of six months of receipt of the reference in labour Court.