
(1977) 07 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil writ Petition No. 190 of 1973

Prabha Chand jain and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-07-1977

Acts Referred:

Citation : (1977) WLN 551

Hon'ble Judges : A.P. Sen, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sen, J.—This petition by one Prabha Chand Jain challenges the validity of order No. 1/72/ 19818-36 dated June, 1972, issued by the Director, Ayurved Department, Govt. of Rajasthan Ajmer, placing the petitioner on the retired list of superannuated Vaidyas with effect from February 17, 1973 on the basis that his date of birth was February 17, 1918.

2. The grievance of the petitioner is that his date of birth recorded in his service book was altered by the Zila Ayurvedic Adhikari District Sawai Madhopur, after notice to him, to February 17, 1919, and that was taken to be his real date of birth in the seniority list of vaidyas, published in the Rajasthan gazette dated October 26, 1972, part II-Ka, wherein the petitioner's name was at serial No. 147, and his date of birth was shown as February 17, 1919, but, without notice to him or without affording him an opportunity of hearing, the Director, Ayurvedic Department Government of Rajasthan, Ajmer, in the impugned order of retirement, has prematurely retired by altering the date of birth to February 17, 1918. Placing reliance on the decision of their Lordships of the Supreme Court in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , it is contended that the change in the age for compulsory retirement of the petitioner, based on a disputed date of birth without giving him an opportunity of hearing, is violative of the rules of natural justice and, therefore, the impugned order is liable to be struck down.

4. Though the petitioner complained that he was given no notice before the change in his date of birth was effected, and that the Director, Ayurvedic Department, Govt. of Rajasthan. Ajmer, acted in breach of rules of natural justice i. e., altered the date of birth as recorded in the service book, without affording him an opportunity of hearing, the respondent did not file a reply to the writ petition.

5. When the matter came up for hearing before Sachar, J. on November 17, 1976, he, looking at the nature of the controversy, i. e. the disputed date of birth, felt that the respondents should be given a chance to file their reply. He, accordingly, allowed two weeks' time to the respondents to do so, subject to the payment of Rs. 50/- as costs. Though time was given to the respondents to file their reply, they did not do so within the time allowed. The matter again came up before Sachar, J. on December 3, 1976 On that day, the learned Judge adjourned the case and gave to the respondents another opportunity to file their reply, if any, subject to the payment of Rs. 100/-as costs. It was a peremptory order with a direction that the Registry would not accept the reply unless it was accompanied by payment of Rs. 150/-towards costs.

5. The respondents have filed their reply controverting the allegation made by the petitioner. According to them the petitioner's date of birth actually should be May 13, 1913 which was the recorded date of birth in the service book and therefore, there was no need of any notice to be given to him. It is further stated that the petitioner, when he entered in the service of the Medical Board, Sawai Madhopur as a Vaidya Grade III, submitted a certificate of Vaidya a Shastri from Ayurvedic And Homeopathic College, Aligarh, Dated February 16, 1929, showing that he had passed the final examination for the degree of Vaidya a Shastri in December 1928. and was placed in II division. If this be so, the petitioner's date of birth could not be May 13, 1913 much less February 17. 1919. The reply cannot, however, be looked into because the costs have not been paid. These are all matters for an enquiry by the Director, Ayurvedic Department, Govt. of Rajasthan Ajmer. I, accordingly, refrain from making any observations on the disputed question i. e., the actual date of birth.

6. In Binapani Dei's case (Supra Shah, J. delivering the judgment of their Lordships, observed that a change of the date of birth in the service book, without giving to the employee an opportunity of showing cause, is contrary to the basic concept of justice, and is in breach of rules of natural justice and therefore an order of compulsory retirement passed on such disputed date of birth without giving a hearing, cannot be sustained. That petitioner's date of birth appearing in his service book was February 17, 1919 as it could not be altered to February 17, 1918 without notice to him. That being so, the order of retirement must be held to be a nullity.

7. During the pendency of the petition, the petitioner has admittedly crossed his age of superannuation and therefore, there is no question of his being reinstated in the service. All that remains is a money claim, even if his actual date of birth

was February 17, 1919 But. as I have already indicated, his actual date of birth, must be long prior to May 13, 1918 in that event nothing would be payable towards the arrears of pay and allowances. These are matters for the Director, Ayurvedic Department, Government of Rajasthan Ajmer, to decide.

8. The writ petition, therefore, succeeds and is allowed. The impugned order of the Director, Ayurvedic Department, Government of Rajasthan Ajmer, dated June 22, 1972 is quashed and he is directed to pass in appropriate order of retirement afresh after giving the petitioner an opportunity of hearing. There shall, however, be no order as to costs.