
(2002) 08 AHC CK 0002
In the Allahabad High Court
Case No : C.M.W.P. No. 36661 of 1995

Ram Dayal Gupta

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Citation : (2002) 5 AWC 3592

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Prakash Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. By means of this writ petition, the Petitioner has prayed for quashing the impugned notice dated 29.9.1995 (Annexure-6 to the writ petition) given by the Manager Shri P. D. Jain Inter College, Firozabad.

3. By the impugned notice, the Petitioner has been informed that when the office was preparing his papers after his retirement on 30th June, 1995, pertaining to the retiral benefits, it has come to the knowledge that his actual date of birth was 1.10.1929. It is alleged that the Petitioner had concealed his date of birth and for ulterior motive gave a wrong date of birth as 1st October, 1934, in the service book and by the aforesaid act, he has taken benefit of five years. He has thus illegally withdrawn wages for the period from 1st July, 1990 to 30th June, 1995, amounting to Rs. 2,80,706.00. The Petitioner was directed to submit his explanation within 3 days failing which legal action was to be taken.

4. He was appointed on 13.7.1959, on probation for one year in L.T. grade in Shri P. D. Jain Inter College, Firozabad, for teaching biology subject. The Petitioner was confirmed and has retired from the college.

5. The Petitioner states that his date of birth is 1.10.1934. He further states that

he had passed the High School examination in the year 1949 from Narain Intermediate College, Sikohabad. He has also annexed Photostat copy of the High School Certificate (Annexure-2 to the writ petition) in which his date of birth is mentioned as 1.10.1934. He has also annexed Photostat copy of the service book in which his date of birth was recorded as 1.10.1934 according to which Petitioner has completed the age of 60 years on 1.10.1994 but as this date fell in the mid of the sessions, he continued till the end of sessions and was retired on 30.6.1995.

6. The Petitioner further states that he has been given no dues certificate by the Principal of the college, therefore, he is entitled to the post retiral benefits consisting of P.F., etc. on the basis of actual date of retirement on 30.6.1995. He further submits that he had submitted the papers for the payment of post retiral benefits but the same has not been paid and instead the Petitioner has been served with the impugned notice dated 29.9.1995.

7. It is settled law that the date of birth recorded in the service book has to be taken as authentic for the purposes of superannuation. The Petitioner had passed the High School examination before entry in service. The service book also shows the date of birth of the Petitioner as 1st October, 1934. Even if the averments made in the impugned notice are taken to be gospel truth, recovery cannot be made as the Petitioner has actually worked in the institution for the period from 1st July, 1990 to 30th June, 1995.

8. The Petitioner has relied upon a decision of the Division Bench of this Court in Adhishashi Abhiyanta Electricity Rihand and Hydel Civil Division U.P. State Electricity Board, Allahabad and Anr. v. Shitla Prasad and Anr. 1994 AWC 468, in which it has been held that finality attaches to the date of birth as recorded in the service book and the same cannot be disturbed on a subsequent plea by the employee that it has been wrongly recorded. The date of birth recorded in the service book of an employee is final and shall be taken to be his correct date of birth. I am of the firm opinion that the date of birth of an employee recorded in the High School Certificate before his entry in service is to be taken as authentic date of birth.

9. In view of the aforesaid facts, I hold that the date of birth of the Petitioner is 1st October, 1934 and he is entitled to the post retirement benefits which cannot be withheld by the Respondents on the basis of the ground taken in the impugned notice.

10. In view of the above, the writ petition succeeds and is allowed. The Respondents are directed to pay all the retirement benefits to the Petitioner on the basis of his date of birth recorded as 1.10.1934 along with 12% interest within a period of three months from the date of production of a certified copy of this order.

11. No order as to costs.