

(2013) 04 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 11716 of 2008 and O.A. No. 149 of 2005

Sant Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Citation : (2013) 04 SHI CK 0007

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Vivek Thakur, for the Appellant; Virender Kumar Verma, Additional Advocate General with Mr. M.L. Chauhan, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The petitioner has prayed mainly the following reliefs:

I. The Impugned Order of compulsory retirement conveyed vide order dated 4.1.2005 and 6.1.2005 by Respondent No. 2 and 3 respectively may kindly be quashed and set aside being illegal, arbitrary, unconstitutional and contrary to the record and facts of the case.

II. The Respondent authorities may kindly be directed to allow the applicant to serve in the respondent Department till attainment of age of superannuation i.e. September 2009.

III. That respondents authority also be directed to make the payment of the salary for the period of disengagement along with interest @ 9% per annum w.e.f. the date of payment due till the date of full and final payment.

The pleaded case of the petitioner is that he was appointed as work charged Blacksmith Grade-II vide Office Order dated 13.05.1998. At that time on a false complaint the joining of the petitioner was delayed, on furnishing proper authentic proof of the age, the petitioner was allowed to join on 15.05.1998. A

false complaint was again made at the instance of persons inimical to the petitioner on the basis of date of birth certificate of the brother of the petitioner. The respondents suddenly issued Office Orders dated 04.01.2005 and 06.01.2005 compulsory retiring the petitioner.

2. The compulsory retirement of the petitioner is against law. The impugned orders are the result of non application of mind. The impugned orders are wrong, illegal and arbitrary. As per the date of birth certificate issued by competent authority, the petitioner is only 54 years old. The date of birth of petitioner is 03.09.1949. The respondents did not conduct any inquiry at any stage. The other similarly situated employees are allowed to serve till the age of 60 years, whereas, the petitioner has been ordered to be retired compulsorily at the age of 55 years.

3. The father of the petitioner had performed two marriages, from first wife Smt. Taro Devi, there was only one son namely Milkhi Ram, who has expired. After the death of first wife, the father of the petitioner performed marriage with Smt. Toti Devi and from that wedlock two sons and one daughter, namely Khajana Ram, Sant Ram and Smt. Laxmi Devi alias Baggi Devi were born. Khajana Ram and Laxmi Devi have expired. The only living son is Sant Ram petitioner. The complaint against the petitioner is based on the date of birth certificate of Milkhi Ram, step-brother of the petitioner. The compulsory retirement of the petitioner amounts to punishment, who has been retired without due process of law.

4. The petition has been contested by respondents by filing reply. It has been stated that petitioner has concealed material facts. The Inquiry Officer in his report dated 22.01.2004 has found the year of birth of the petitioner 1937 on the basis of statement of Panchayat Secretary, Gram Panchayat, Jijwin and other record. The petitioner is trying to rely upon the affidavit of his mother which is not in consonance with the panchayat record. As per date of birth 09.11.1993 Vikrami of the petitioner, he was 68 years on 04.01.2005 and not 54 years as per his assertion.

5. On merits, it has not been denied that petitioner was appointed work charged Blacksmith G-II vide order dated 13.05.1998. The petitioner at that time supplied his wrong date of birth. It has been established from pedigree table of petitioner that he was the eldest son of Mauji Ram. The date of birth of Smt. Ganga Dei daughter of petitioner is 22.03.1964 as per record of Government Primary School, Jijwin. The possibility of petitioner becoming father at the age of 15 years was too remote. The respondents have supported the impugned orders. The petitioner has filed rejoinder and reasserted his case.

6. I have heard the learned counsel for the parties. At the time of hearing, the learned Additional Advocate General has produced copy of report dated 22.01.2004 of the Assistant Engineer along with annexures. The learned counsel for the petitioner has not disputed the authenticity of the report dated 22.01.2004. The petitioner has relied copy of birth register No. 22, Police

Station, Talai, Bilaspur, showing the birth of one son to Mauji Ram on 03.09.1949. The affidavit dated 16.07.2003 of Smt. Toti Devi indicates that Sant Ram was 54 years old on the date of affidavit. As per this affidavit, the year of birth of petitioner comes to 1949.

7. As per petitioner, his father had two wives and from two marriages in all three sons and one daughter were born, except petitioner, his other brothers and sister had died. The petitioner has placed on record copy of birth register No. 22, Police Station, Talai, indicating that a son was born to Mauji Ram father of the petitioner on 03.09.1949. The affidavit dated 16.07.2003 of Smt. Toti Devi, mother of petitioner, indicates that on 16.07.2003 the petitioner was 54 years old. In the family register Part-I, Gram Panchayat, Jijwin, which is maintained under the Himachal Pradesh Panchayati Raj Act, 1994, the year of birth of the petitioner is recorded 1937. In date of birth register No. 23, Police Station, Talai, Bilaspur, birth of a son on 09.11.1993 Vikrami has been recorded showing father of the boy Mauji. In the school leaving certificate of Ganga Dei daughter of Sant Ram, her date of birth has been shown 22.03.1964.

8. It appears a complaint was made to the authorities that age of the petitioner at the time of complaint was about 65 years. The complaint was forwarded to Assistant Engineer, Sub-Division, Barhi. On 05.04.2003, the Assistant Engineer issued show cause to petitioner and asked him to appear before him on 17.04.2003 along with documentary proof of his date of birth. In this way, inquiry regarding date of birth of the petitioner had commenced. In the inquiry, statement of Rattan Chand, Panchayat Secretary, Gram Panchayat Jijwin was recorded. He stated that year of birth of Sant Ram, son of Mauji Ram in Pariwar Register Part-I at page 65 has been recorded 1937. The statement of Sukh Ram cousin of the petitioner was also recorded on 06.05.2003. He has stated that he was 61 years old and according to him the petitioner was 5 years older to him.

9. The statement of petitioner was also recorded. He has stated that they were three brothers and one sister. The eldest brother was Milkhi Ram. He has stated that his all brothers and sister have died. He has stated that at the time of his appointment he had approached the panchayat for his date of birth record, but he was told that there was no such record with the panchayat. He was directed to approach Police Station, Talai. He contacted Police Station, Talai, but he was directed to approach Chief Medical Officer. Thereupon, he brought his date of birth certificate from Chief Medical Officer, Bilaspur, which he handed over at the time of his appointment. The panchayat record regarding his age is false. He has land dispute with Sukh Ram.

10. The petitioner has relied birth register No. 22, Police Station, Talai, which indicates that one son was born to Mauji Ram, father of petitioner, on 03.09.1949. He has also relied on the affidavit of his mother Smt. Toti Devi, who has deposed that on 16.07.2003 the petitioner was 54 years old. The petitioner has not placed on record birth entries of his other brothers and sister nor Smt. Toti Devi in the affidavit has given the ages of other brothers and sister of the

petitioner. On the contrary, respondents have placed on record copy of family register Part-I, Gram Panchayat, Jijwin, showing birth year of petitioner 1937. The family register Part-I is maintained by the Gram Panchayat under the H.P. Panchayati Raj Act, 1994. This document is more authentic as it is maintained under the statute in comparison to affidavit of Smt. Toti Devi, mother of the petitioner, who is an interested person.

11. The birth register No. 22 indicates that one son was born to Mauji Ram, father of petitioner, but it is not possible to infer from that entry that said entry relates to petitioner. In the school leaving certificate of Ganga Dei, daughter of petitioner, her date of birth has been shown 22.03.1964, meaning thereby Ganga Dei was born when petitioner was about 14 1/2 years old as per his projected date of birth 03.09.1949. The chance of petitioner becoming father of a child at the age of 14 1/2 years is remote and creates suspicion. Sukh Ram cousin of the petitioner got recorded his statement on 06.05.2003 and on that date he has given his age 61 years and also said that petitioner was 5 years older to him. In other words, on 06.05.2003 the petitioner was 66 years as per Sukh Ram.

12. According to petitioner, Sukh Ram is inimical to him and he is the person who lodged the complaint, but when petitioner appeared before the Inquiry Officer and made his statement, he did not contradict Sukh Ram on the material point that on 06.05.2003 Sukh Ram was 61 years old and petitioner was 5 years older to him. The dispute of Sukh Ram, if any, with petitioner over piece of land has nothing to do with the age of Sukh Ram disclosed by him before the Inquiry Officer and further that petitioner is 5 years older to him, more particularly, when Sukh Ram is cousin of petitioner and petitioner has not disputed material part of statement of Sukh Ram. The Inquiry Officer has taken a possible view from the material produced before him. It cannot be said that view taken by Inquiry Officer is based upon no evidence. The scope of petition is limited. It cannot be said that conclusion of the Inquiry Officer in the report dated 22.01.2004 is perverse. Therefore, no fault can be found with the impugned orders. In view of above, petition fails and is accordingly dismissed.