

(1989) 07 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Second Appeal No. 144 of 1987

Shiv Prasad Shukla

APPELLANT

Vs

Municipal Board and Others

RESPONDENT

Date of Decision : 24-07-1989

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1989) 1 RLW 662 : (1989) 2 WLN 52

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.C. Sharma, J.—This is a second appeal filed by plaintiff Shiv Prasad Shukla against the decree of the Additional District Judge No. 1, Ajmer dated May 28, 1987, where by the decree passed in plaintiff's favour by Additional Munsif. Kekri in Civil Suit No. 162/1975 was reversed and the plaintiffs suit for declaration that his real date of birth was November 11, 1922 as accepted by the Appointing Authority and that he was entitled to continue in service of the respondent Municipal Board with effect from 27-9-1975 was dismissed.

2. The learned Counsel for the appellant contended that the appellant was an employee of Municipal Board, Kekri. The Administrative Committee of the Municipal Board, Kekri by its resolution dated January 14, 1975 had unanimously decided that the actual date of birth of the appellant was November 11, 1922 & not March 20, 1920 and had made recommendation for its correction. The learned Counsel for the appellant contended that the Municipal Board, Kekri was not justified in referring the matter to the State Government along with the recommendations of the Administrative Committee as the Municipal Board itself was the competent authority in the matter The learned Counsel has also relied upon Rule 12 of the Rajasthan Municipalities (Subordinate and Ministerial) Services Rules, 1963 and on the basis of that rule, it was urged that the Administrative Committee of the Municipal Board was competent to decide about

the real date of birth of the appellant which it had decided to be November 11, 1922. It is also argued that the Municipal Board had accepted the recommendation of its Administrative Committee and therefore, had recommended the matter to the State Government. It was argued that the Director, Local Bodies, Rajasthan had no jurisdiction to overrule the decision of the Administrative Committee of the Municipal Board, Kekri and that of the Municipal Board itself.

3. The learned Counsel appearing for the Municipal Board, Kekri urged that according to Rule 7(1) of the Rajasthan Service Rules, when a Government servant is required to retire, revert or cease to be on leave, on attaining a specified age, the day on which he attains that age is reckoned as a non-working day, and the Government servant must retire, revert, or cease to be on leave, as the case may be, with effect from and including that day. It has been pointed out that the date of birth of the appellant in his matriculation certificate and also in his Service Book maintained by the Municipal Board was admittedly, March 20, 1920 and, therefore, be retired with effect from March 20, 1975. He could not continue in service beyond that date unless, in accordance with any rules or administrative instructions, his date of birth was corrected by the competent authority. Reference was also made to the Notification No. F. 13(10)F-II/53 dated, Dec. 23, 1963, by which the State Government had decided that no claim and request for condonation, pay fixation, changes in emoluments, corrections in date of birth, changes in service history etc. which affect a person's pension will be entertained by the Government unless such claims had been made within 3 years prior to the due date of retirement. Any claim made at the time of or after retirement will be summarily rejected This order was not be applicable to those who were due to retire by 31st March, 1964. The learned Counsel further submitted that by virtue of Rule 36(1) of the Rajasthan Municipal (Subordinate and Ministerial) Service Rules, 1963, subject to the provisions of Section 310 of the Municipalities Act and except as provided in the said rules, the pay, allowances, pension, leave and other conditions of service were to be regulated by the rules made u/s 297 of the Act and pending the issue of such rules by the Rajasthan Service Rules (except provisions relating to pension and payment of medical allowance) as amended from time to time. It was therefore, urged that she appellant was governed in the matter in question by the provisions of Rule 7 of the Rajasthan Service Rules, 1951 and the decisions thereunder. The appellant had not applied for correction of his age within 3 years of his due date of retirement and therefore, he was not entitled to any correction of age.

4. The first decision of the Supreme Court on the question of correction of age is in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . In that case, it was the Government of Orissa which gave notice to the Government Servant as to why her date of birth should not be accepted earlier than recorded in the Service record. It was held that even when such an administrative order, which involved civil consequences, is made, it must be made consistently with the rules of natural justice and the respondent should have been given an

opportunity of being heard and meeting or explaining the evidence brought against her. The next decision came in the case of *State of Assam and Another Vs. Daksha Prasad Deka and Others*, In that case, it was held that the date of compulsory retirement under F. R.56(a) must be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record was first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered into the service record and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record. But where the application for rectification is made within the prohibited time as mentioned in the service rules (i.e. within 3 years of the date of actual superannuation) the application could not be entertained. In *R.S. Kallolimath Vs. State of Mysore and Another*, it was held that the State has a right to fix the date of birth of a Government servant even though a different date was accepted by the Government at the time of appointment. In *Bhupendra Nath Chatterjee v. State of Bihar* 1977 3 S C.C. 490, it was held that the date of birth recorded in official records and admitted by the appellant in one of his application being January, 1, 1908, the appellant could not claim his date of birth to be January 10, 1908 on the plea that the date of birth recorded in the Service Book was January 1908. In *Sarjoo Prasad Vs. General Manager and another*, the rule laid down in *Dr. (Miss) Binapani Devi's* case was reiterated. The latest decision of the Supreme Court is in *General Manager (Marketing) Hindustan Fertilizer Corporation Vs. Subodh Chandra Das and Others*, In that case the date of birth of the first respondent as recorded in the register maintained by the Corporation was 1st June, 1931 and in the usual course he had to retire from service on 1-6-1989 on completion of 58 years of age. He however, filed a writ petition in the High Court of Patna claiming that this date of birth should be altered to 20th October, 1938. The High Court of Patna, after hearing the matter at length and examining the factual pros and cons stated at the Bar, held that the year of the birth as brought out by the petitioner being 1931 cannot be assailed nor interfered with. However, another Judge felt that since the petitioner has his problem domestic of otherwise and he in 1971 was in fact given to understand that his year of birth would be 1938 some compassionate endowment may be made in his favour. The Supreme Court held that the High Court should not have interfered with the recorded age and it had committed a serious error in making an order directing the Corporation "as a special case" to re-appoint the first respondent for a period of 3 more years after his due date of retirement. In the light of the background of these decisions, it is quite clear that the recorded date of birth in the Matriculation certificate as well as in the Service Book of the appellant was March 20, 1920. According to Rule 36(1) of the Rajasthan Municipal (Subordinate Service Rules), 1963, the Rajasthan Service Rules, 1951 on the matter, as amended from time to time, were applicable because no rule what so ever on the point had been framed u/s 297 of the Municipality Act.

Learned Counsel for the appellant has wrongly relied upon rule 12 of the Rajasthan Municipalities (Subordinate and Ministerial) Service Rules, 1963. This Rule only specified the minimum and the maximum age which a candidate for direct recruitment to the Service must have attained on the date of receipt of application putting forward his candidature for direct recruitment. Proviso to the said rule makes relaxation of age on the above matter in respect of certain categories of candidates belonging to Scheduled Castes, Scheduled Tribes Ex-Servicemen etc This rule has nothing to do with the correction of date of birth recorded in the Service Book of the employee. It is an independent right of the Government servant or Municipal employee to get his date of superannuation extended by getting his date of birth as recorded in the service book corrected in case, it was wrongly recorded. The rule that has been laid down in State of Assam and Anr. v. Daksha Prasad Deaka's case (supra) required that the prescribed procedure has to be followed for the purpose. The required procedure in the instant case was to make an application 3 years prior to the due date of retirement. In the instant case, the appellant had not made the application within the prescribed time and as such, the application could not be entertained. In State of Assam and Anr. v. Daksha Prasad Deka's case (supra) there was Fundamental Rule 56(a) and the respondent was liable to compulsorily retirement at the age on which he attained the age of 55 years. There was subsidiary Rule 8 (Note) which stated that no claim for alteration in the date of birth shall be made on a date within 3 years of the date of actual superannuation. His Lordship Shah, J, relying on S.R 8 (Note), held that the application for rectification could not be entertained. The learned Counsel for the appellant referred to the decision in Manak Chand Vaidya v. State of Himachal Pradesh and Ors. 1976(1) SLR 402 . The learned Judges of the Himachal Pradesh High Court distinguished the decision in Daksha Prasad Deka's case on the ground that in the case before them there was the Government of India's decision u/Rule 79 of the General Financial Rules, 1963 which was only an executive instruction. It was also stated that the validity of the rule had not been challenged before the Supreme Court. With all respects to the learned Judges suffice is to state that till statutory rules were framed, the Govt. is competent to issue executive or administrative instructions. The Govt. instructions would hold the field in the absence of service rules on the point. If the service rules are silent on any particular point, the Govt. can fill up the gaps and supplement the rules with instructions not inconsistent with the rules already framed. Unless there is anything in the service rules which is repugnant to the administrative instructions, the same is to be treated as valid and is binding on all concerned. See Shri Ram Prasad (Deceased) by his Legal Representative Vs. The State of Punjab, , Sant Ram Sharma Vs. State of Rajasthan and Another, , State of Uttar Pradesh v. Chandra Mohan Nigam (1978) SLR 12 Swaran Lata Vs. Union of India and Others, ; Union of India v. Arun Kumar Ray AIR 1988 SC 737 , Union of India (UOI) and Others Vs. R. Narasimhan, and Union of India and Ors. v. Shri Somasundaram v. Viswanath and Ors. AIR 1988 SC 2255, 2259 para 6.

5. Since the appellant did not make any application for correction of his date of birth within three years of his due date of retirement, the application for correction of date of birth, which had been made by him within the prohibited period (i.e. within three years of the date of superannuation), was not maintainable. Consequently, the appellant was not entitled to the reliefs claimed and the Addl. District Judge No. 1, Ajmer rightly reversed the decree of the trial court and the appellant's suit was rightly dismissed.

6. This second appeal has no merit in it and it is hereby dismissed with no orders as to costs.