

(2005) 02 AHC CK 0124

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47956 of 2004

Shobha Nath Dubey

APPELLANT

Vs

Managing Director, U.P. Sahakari Gram Vikas Bank Ltd.

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 24

Citation : (2005) 02 AHC CK 0124

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Virendra Singh, for the Appellant; Vivek Singh, for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—Heard Sri Virendra Singh, learned counsel for the petitioner and Sri Vivek Singh, learned counsel appearing on behalf of the respondent-Bank. Counter and rejoinder affidavits have been exchanged and with the consent of the learned counsel for the parties this writ petition is being disposed of at this stage.

2. The dispute in the present writ petition is with regard to the date of birth of the petitioner who was an employee of U.P.Sahkari Gram Vikas Bank Limited. The petitioner joined the service of the Bank in the year 1967. He passed high school examination in the year 1981, while in service. His date of birth recorded in the high school certificate as well as class IX certificate issued by the school (which was prior to his joining the service) was 26.1.1947. Even in the service book maintained by the Bank, the date of birth of the petitioner had throughout been recorded as 26.1.1947. On 15.11.2003 the Managing Director of the Bank passed an order indicating the names of 19 employees who were to retire in the year 2004. The name of the petitioner finds place at serial No. 9 in the aforesaid order wherein his date of birth has been shown as 8.6.1946. Since according to that the petitioner was to attain the age of superannuation of 58 years on

7.6.2004, he was to retire on 30.6.2004 i.e. the end of the month on which he attained the age of superannuation. A copy of the said order was also endorsed to the concerned officers of the Bank under whom the said employees were working to enable them to certify the correctness of the date of birth shown in the said order dated 15.11.2003.

3. In response to the aforesaid order dated 15.11.2003, the Senior Manager of the Bank wrote to the General Manager (Administration) that as per the high school certificate of the petitioner, his date of birth was 26.1.1947. It was also categorically mentioned that even in the service book of the petitioner the date of birth recorded was 26.1.1947. The petitioner had also on 22.11.2003 written to the Bank that his date of birth as recorded in the high school certificate as well as service book was 26.1.1947 and the same could not be treated as 8.6.1946.

4. In response to some notice, the General Manager (Administration) of the Bank wrote to the petitioner on 5.6.2004 that the date of birth of the petitioner, as per the seniority list dated 1.10.1984, would be 8.9.1946 (instead of 8.6.1946). Accordingly, by order dated 11.6.2004 passed by General Manager (Administration) the date of birth of the petitioner was corrected as 8.9.1946 in place of 8.6.1946 and now the date of retirement of the petitioner was shown as 30.9.2004 instead of 30.6.2004. In response to the aforesaid order, the Branch Manager of the Bank passed an order dated 30.9.2004 relieving the petitioner from service on his attaining the age of superannuation on the basis of the order dated 11.6.2004.

5. Aggrieved by the aforesaid orders dated 15.11.2003, 11.6.2004 and 30.9.2004 passed by the respondent-Bank the petitioner has filed this writ petition with a further prayer that he should be permitted to continue in service on the basis of his date of birth recorded in the service book, which was 26.1.1947. A further prayer has also been made that he should also be given the benefit of the amended Regulation 24 of the U.P. Cooperative Societies Service Regulations, 1975, which has come in operation with effect from 30.10.2004, whereby the date of retirement of the employees of the Bank was increased to 60 years in place of 58 years. In the said regulation it has been provided that those employees who were working on the date of the amendment i.e. 30.10.2004 would be entitled to the said benefit.

6. A categorical assertion has been made in para 6 of the writ petition that in the service book of the petitioner prepared by the respondent-Bank, his date of birth has always been recorded as 26.1.1947. A copy of the relevant extract of the service book which was initially signed by the Regional Manager of the Bank on 1.8.1980, filed as Annexure-3 to the writ petition, also shows the date of birth of the petitioner as 26.1.1947. The aforesaid assertions made in the writ petition have not been denied in the counter affidavit. The same also finds support from the report of the Senior Manager of the Bank dated 11.2.2004 (Annexure-6 to the writ petition), which document has also not been denied by the respondent-Bank in the counter affidavit. In the said report it has been categorically stated

that the date of birth as recorded in the service book of the petitioner is 26.1.1947. The same date of birth is also recorded in the certificate of the school whereby it has been certified that the petitioner has passed class IX, as well as the high school mark-sheet which documents have been filed by the petitioner along with the writ petition and have not been controverted in the counter affidavit.

7. The explanation given by the respondents for changing the date of birth of the petitioner first to 8.6.1946 and then to 8.9.1946, is not worthy of acceptance. The respondents have relied on some document which was prepared at the time of entry of the petitioner in service, a copy of which has been filed as Annexure-C.A. 1 to the counter affidavit. In the said document it has been shown that the petitioner is class IX pass and his date of birth is 8.9.1946. It has also been mentioned therein that the petitioner was of 20 years when he was taken in service. Admittedly the petitioner had joined the service in the year 1967. The basis for showing his date of birth as 8.9.1946 has not been given. Reliance has also been placed on the seniority list dated 1.10.1984, a copy of which has been filed as Annexure-2 to the counter affidavit. The name of the petitioner finds place at serial No. 111 where his date of birth has been shown as 8.9.1946. The said documents cannot form the basis of changing the date of birth of the petitioner which has throughout been recorded in his service book as 26.1.1947. It is settled law that an employee cannot get his date of birth changed at the fag end of his career merely on the basis of some documents which were available with the employee but had not been produced by him earlier but was only produced at the time of his retirement. Similarly, applying the same principle, even the employer cannot be permitted to change the date of birth of its employee just a few months before his retirement, except in accordance with law. The respondents have not been able to show that the procedure prescribed under the service rules had been followed prior to changing the date of birth of the petitioner. It is the date of birth as recorded in the service book which is to be taken as correct for the purposes of service of an employee. In the present case, besides the same having been recorded to be 26.1.1947 in the service book, even the high school certificate also bears the same date of birth as also the certificate issued by the school from where the petitioner has passed class IX examination. I see no reason why the said date of birth ought to have been changed merely on the basis of his date of birth mentioned in seniority list which had been prepared as far back as in the year 1984. The service book of the petitioner prepared in the year 1980 showed the date of birth of the petitioner as 26.1.1947. Even the report of the Senior Manager of the Bank dated 11.2.2004 certifies that the date of birth of the petitioner in his service book is 26.1.1947. Accordingly, the correction in the date of birth of the petitioner at the fag end of his career by the respondent-Bank (employer) without following any procedure and without there being any substantive reason for incorporating such change, would thus be illegal.

8. For the aforesaid reasons, the impugned orders dated 15.11.2003; 11.6.2004

and 30.9.2004 passed by the respondent-Bank are quashed. The petitioner could be made to retire from service only on the basis of his date of birth as recorded in his service book, which is 26.1.1947. Thus he was to be in service till 31.1.2005. Since the petitioner is to be treated in service on 30.10.2004, he would also be entitled to the benefit of the amendment made in Regulation 24 of the Regulations of 1975.

9. Accordingly, this writ petition stands allowed and the petitioner shall be entitled to all consequential benefits. No order as to cost.