
(2002) 02 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 6160 of 2002

Shyampal Singh

APPELLANT

Vs

Roza Sahkari Ganna Vikas Samiti Ltd. and Others

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Citation : (2002) 2 AWC 1199(2)

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Manish Kumar Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard learned counsel for the parties.

2. Petitioner was appointed as clerk in Shahjahanpur Cane Society some time in the year 1959-60. In the year 1973, he was suspended while working as clerk at Roza Cane Society at Shahjahanpur. In the year 1982, he was again Issued a fresh appointment letter provided that he will not have any claim to his past services. It is asserted that on 31.12.2001, he was served with a letter by the District Cane Officer, Shahjahanpur to submit original documents of his educational qualification as well as the date of birth. On 2.1.2002, he was served with an order passed by the Secretary, Roza Sahkari Ganna Samiti Ltd., Shahjahanpur, retiring him from service w.e.f. 2.1.2002. In the same order, it was stated that according to the letter received from the District Cane Officer, Shahjahanpur, the petitioner's date of birth is 1.5.1939 and that he should have retired on 30.4.1997, and further that the petitioner has been continuing in service by playing fraud upon the employer. The petitioner represented to the Secretary, Roza Sahkari Ganna Vikas Samiti Ltd. Roza. Shahjahanpur. In reply, the petitioner was Informed by the impugned order dated 29.1.2002 stating, that he was given fresh appointment letter dated 3.2.1982 ; that from the service record, it was found that the petitioner had not submitted any of the original

documents or copies thereof and whereas his date of birth is 1.5.1939, he made a false entry in the information register regarding his date of birth to be 1.5.1945. Thus, he continued in employment by playing fraud and a sum of Rs. 1,27,611.90p has been demanded towards the wages which the petitioner has drawn w.e.f. 1.5.1997. upto 2.1.2002 to which he was not entitled.

3. The petitioner has not disclosed his correct date of birth nor has disputed the fact that according to his service record, his date of birth is 1.5.1939 and he should have been retired w.e.f. 30.4.1997, according to the U. P. Cane Co-operative Service Regulation, 1975. The Court put repeated questions to the learned counsel for the petitioner whether he disputes the date of birth recorded in the service record of the petitioner as 1.5.1939. The counsel for the petitioner has not denied it. and has stated that the petitioner is not in a position to provide his correct date of birth.

4. It is contended that it was the duty of employer to retire petitioner on the date of retirement, to be computed from his service book, and that in case the petitioner has been allowed to continue in employment and has actually worked, the salary drawn by him cannot be recovered from him. Petitioner has relied upon the following decisions of the Court to support his submissions :

(1) B.N. Singh v. State of U. P. and another 1979 All U 1184.

(2) Sila Ram Yadav v. District Inspector of Schools, Jaunpitr and another. 1990 (1) AWC 164: 1990 Lab IC 1025.

(3) Wiranjan Rai v. District Inspector of Schools, Ghazipur and others 1991 (1) AWC 483 : (1991) 2 UPLBEC 1416.

(4) C. N. Thapliyal v. Director of Higher Education. U. P., Allahabad, and others (2000) 2 UPLBEC 1831.

(5) Bhavani Vs. Bhanu,

(6) State of Bihar Vs. Narasimha Sundram,

(7) Ramswaroop Masawan Vs. Municipal Council and Another,

5. In B, N. Singh's case. 1979 All LJ 1184, salary of certain noters and drafters in office of Inspector General of Police was wrongly fixed. State Government initiated action in recovering the amount from some of clerks whereas other clerks allowed to retain the amount. This Court held that wages paid to an employee by an employer voluntarily in bona fide manner without there being any element of fraud or misrepres-A.W.C. 76 sentation, cannot be recovered from the employee subsequently merely on the ground that some mistake of interpretation of rules might have been committed. In Sita Ram Yadav's case 1990 Lab IC 1025. ad hoc teacher appointed for specific period was allowed to work beyond the period for which he was appointed. It was held that he was entitled to the payment of salary and that the provisions of Articles 21 and 23 of the Constitution of India were relied upon in directing that the petitioner shall be

paid continuously till a candidate duly selected by the secondary education commission takes over from the petitioner. In *Niranjan Rai* (1991) 2 UPLBEC 1416. It was held that the payment of salary for the period petitioner worked cannot be directed to be refunded on the ground that the petitioner had rendered work even after his fixed term had expired. In *C. N. Thapliyal* (2000) 2 UPLBEC 1831 . the petitioner served for one year more after attaining the age of superannuation, it was held that if the department wanted to recover the amount from the petitioner, disciplinary proceedings ought to have been Initiated fixing responsibility as to whether petitioner was responsible for overstay in service or was it caused on account of negligence on the part of the officers and officials of the department. The Court relied upon *State of Bihar Vs. Narasimha Sundram* , in holding that the respondent cannot be refused his emoluments for the period in question as no proceedings were ever Initiated for inquiry as the alleged fraud played by the respondent on the department. In *Bhauani v. Bhanu*. AIR 1960 Ker 133 . the High Court held that the approval was a condition of the grant of appointment and in case the manager appoints a person, who was not qualified, he takes the risk of approval and consequently the grant, but that cannot affect his liability to pay the teacher whom he appointed and his services, which he had taken. In *Ramswaroop Masawan Vs. Municipal Council and Another* , the employee continued beyond the age of superannuation for about six months. In the meantime, superannuation age was raised to 58 years, the benefit of 58 years was denied to the petitioner. Writ petition was dismissed by the High Court on the ground that if the petitioner was allowed to work after 26.1.1970 to 30.7.1970 and in between on 1.4.1970, the age of superannuation was raised, he will be treated to have been in re-employment, and the said continuance did not confer any right to receive the retirement age and pensionary benefits. The Supreme Court dismissed the appeal holding the appellant stood superannuated on reaching the age of 55 years and his continuance in service can only be treated as re-employment and thus he cannot set up a claim for being, continued upto the age of 58 years w.e.f. 1.4.1970.

6. On the other hand, it has been held in *Radha Kishun Vs. Union of India (UOI) and Others*, that if the employee continues beyond the date of superannuation, he will not be entitled to the amount for the period beyond which date he was to retire. On the question whether he is entitled to the payment of allowances for the period in which he actually worked after the date of retirement, it was held as follows :

"The learned counsel for the petitioner contends that since the petitioner has worked during the period, he is entitled to the payment of the pay and allowances from 1.6.1991 to 26.6.1994, and that he is also entitled to the payment of provisional pension, death-cum-retirement gratuity, leave encashment, commutation of pension amount. P.P.F. money and the amount deposited under C.G.H.S. on the plea that he retired from service on 31.5.1994. We are aghast to notice the boldness with which it is claimed that he is entitled to all the benefits with effect from the abovesaid date when admittedly he was to

retire on 31.5.1991. It would be an obvious case of absolute irresponsibility on the part of the officer concerned in the establishment in the Section concerned for not taking any action to have the petitioner retired from service on his attaining superannuation. It is true that the petitioner worked during that period, but when he is not to continue to be in service as per law, he has no right to claim the salary etc. It is not the case that he was re-employed in the public Interest, after attaining superannuation. Under these circumstances, we do not find any illegality in the action taken by the authorities in refusing to grant the benefits.

It is then contended that the petitioner would have conveniently secured gainful employment elsewhere and having worked, he cannot be denied of the legitimate salary to which he is entitled. Though the argument is alluring, we cannot accept the contention and give legitimacy to the illegal action taken by the authorities. If the contention is given acceptance. It would be field day for manipulation with impunity and one would get away on the plea of equity and misplaced sympathy. It cannot and should not be given countenance."

The appeal was consequently dismissed with a direction to the Government of India to take appropriate disciplinary action against all the persons concerned for their deliberate dereliction of duty in not ensuring the petitioner's retirement on his attaining the age of superannuation.

7. Coming to the present case, the petitioner has not given his correct date of birth nor has denied the correctness of the date of birth relied by the respondents. Superannuation is an incident of statutory service rules. It is difficult to believe that an employee would forget his retirement date, and continue to wait for the orders of retirement. In the present case, the petitioner made a representation on which he was informed that he continued on false information furnished by him in the information register. The petitioner has reiterated in his reply given to the appointing authority that he had given all the relevant documents at the time of joining and that it was the respondents' duty to have informed him with the date of retirement. U. P. Cane Cooperative Service Regulations, 1975, have been framed in exercise of powers u/s 122 of the U. P. Cooperative Societies Act. These Regulations are statutory in nature and that the date of retirement on attaining the age of superannuation is statutory incident of service. The petitioner should have been retired on attaining the age of superannuation. In case, he has continued by default, it cannot be treated to be re-employment or extension of service. An employee, who claims the benefits of service rules, is also statutorily required to abide by the same rules which provide for his retirement on a specified and predetermined date. He cannot be permitted to say that the employer should have issued an order of retirement. In case, such a view is taken, it will amount to a deliberate breach of service rules, as well as give scope for manipulations and payment of wages beyond the period of superannuation.

8. For the aforesaid reason, the writ petition is devoid of force and is accordingly

dismissed with direction to the Registrar. U. P. Co-operative Societies to take action against those officers/officials, who were responsible to have caused gross negligence for continuing the petitioner in service beyond the date of retirement.