
(2014) 05 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2130/2014

Smt. Bakta

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0048

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Rajendra S. Charan, Advocate for the Appellant; S.R. Paliwal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Vineet Kothari, J.—The petitioner in the present writ petitions has sought following relief/s:-

It is, therefore, humbly and respectfully prayed that this writ petition of the petitioner may kindly be allowed:

A. By an appropriate writ, order or direction, the order dated 1.7.2007 (Annexure-3) passed by the respondents may kindly be quashed and set aside with all consequential benefits.

B. By an appropriate writ, order or direction, the respondents may kindly be directed to consider the date of birth of the petitioner as 15.10.1968 as shown in the service record.

C. By an appropriate writ, order or direction, the respondents may kindly be restrained from taking into account the medical record for changing the date of birth for official record.

2. The learned counsel for the petitioner submitted that the controversy involved in the present writ petition is covered by the decision of this Court in the case of Nakhtu Ram V/s State of Rajasthan and ors.-SBCWP No. 660/2011 decided on

15.1.2014, in which this Court held as under:

1. The petitioners were appointed as Work Charge Employee by the respondent-Forest Department under the Work Charge Employees Rules, 1964 (for brevity, hereinafter referred to as "the Rules of 1964") in the year 1991-92 vide the appointment order Annex. P/3. After about 10-12 years for no disclosed reasons, the respondent Forest Department constituted a Medical Board for determining the correct age/date of birth of the petitioners, since at the time of entry in the services as Work Charge Employee, their date of birth was taken as per affidavit furnished by them.

2. The Medical opinion given vide Annex. P/4 only discloses the approximate age of the petitioners. A notice dated 03.07.2002 (Annex. P/5) came to be issued to the petitioner by the respondent-Forest Department that their date of birth as per Medical Board is 06.01.1951 (Petitioner-Nakhtu Ram S/o Kesara Ram in SBCWP No. 660/2011) and unless he establishes his correct date of birth as per affidavit already given by him, he will not only be retired as per the date of Birth determined by the Medical Board but also a case for criminal proceedings will be filed against the petitioner/s. Such notices given in the year 2002, did not yield anything from the petitioner/s and accordingly vide order Annex. R/1 dated 23.11.2010, the petitioners were directed to be retired from the forthcoming date i.e. 31.01.2011.

3. The petitioners have challenged this office order seeking to retire the petitioners prematurely and illegally from the services, who had already acquired the status of semi-permanent and permanent status under the Rules of 1964.

4. Mr. H.S. Sidhu, learned counsel for the petitioners, has urged that the controversy involved in the present writ petitions, is squarely covered by a decision of a coordinate bench of this Court in the case of Smt. Bheera Vs. The State of Rajasthan & Anr. (SBCWP No. 3746/2006 decided on 06.10.2006) in which, against the same respondent-Forest Department for similarly situated employee (Beldar), who was appointed on 01.04.1985 under the similar circumstances, when the Medical Board sought to determine the age of the employee, this Court quashed the said office order prematurely retiring the petitioner/incumbent and allowed the writ petition with cost of Rs. 5,000/- against the Forest Department.

5. The relevant portion of the said judgment of the coordinate bench of this Court in the case of Smt. Bheera (supra) is quoted herein below for ready reference:-

Heard counsel for the parties.

At the first instance it is made clear that provisions of the Rules of 1951 are having no application in present controversy as the petitioner is a member of work charge cadre and application of the Rules of 1956 is barred for such employees in view of Rule 2 (g) of the Rules of 1951. Be that as it may, it is the

position admitted that at the time of first appointment the petitioner declared 18.12.2012 as her date of birth. It remained unchanged in various documents of the respondents. The respondents on basis of a medical examination determined in the year 1946 as birth year of the petitioner. The recommendation made by the medical officer is available on record as Anx. R/3. As a matter of fact the certificate given by the medical officer is a most cryptic one and it does not disclose any expertness in determining the age. It simply mentions that on basis of general appearance the age of the petitioner appears to be 50 years on 2.11.1996. Such a recommendation of medical officer cannot be a basis for change of date of birth. The petition at the time of her first appointment declared 18.12.1951 as her date of birth and nothing is available on record to disbelieve the date of birth given by the petitioner. If the respondents were having any doubt about genuineness of date of birth of the petitioner then they should have given a notice to the petitioner and only after adhering principles of natural justice a change in date of birth could have been made. The entire procedure adopted by the respondents to change the date for birth of petitioner is highly unjust and arbitrary, besides in violation of principles of natural justice. By entering and acceptance of the date of birth as 18.12.1951 a valuable right accrued in favour of the petitioner to continue in service till arriving the age of 60 years. Such a right could not be disturbed unilaterally.

In view of it, the determination of date of birth of the petitioner as 11.10.1946 by the respondents is declared illegal. The order dated 13.6.2006 to retire the petitioner from service w.e.f. 31.10.2006 is also declared illegal. The same, therefore, is quashed.

The writ petition is allowed accordingly with cost in a tune of Rs. 5,000/-, that is required to be paid to the petitioner by the respondents within a period of three months from today.

6. Mr. H.S. Sidhu, learned counsel for the petitioners, therefore, urged that similar orders passed in the present case seeking to retire the petitioners prematurely, also deserve to be quashed as the respondents have failed to take any action in pursuance of the notice given to the petitioner vide Annex. P/5 dated 03.07.2002 and the petitioners being not qualified of Secondary/Higher Secondary Examination, there was no official record available with them regarding their date of birth and their date of birth taken on the basis of affidavit filed by the petitioners, at the time of entering in the services, deserves to be taken as true, which was accepted by the respondents for almost period of 10 years or more. He further argued that there was no occasion to appoint a Medical Board for this purpose and he also urged that the approximate age determined by the Medical Board on the basis of physical, dental and radiological examination cannot be taken as final and good substitute for the exact date of birth given in the affidavit/s filed by the petitioners and consequently, the impugned orders seeking to retire the petitioners prematurely, deserve to be quashed and set aside.

7. The date of birth of all these petitioners as per affidavit or other evidence filed by them at the time of their entry in the services as per averments made in the writ petition and the expected date of retirement on attaining the age of superannuation of 60 years, is given in the tabular form, for ready reference:-

8. On the other hand, Mr. M.A. Siddiqui, learned counsel for the respondent-Forest Department, has urged that the petitioners failed to respond to the notice given to them in this regard and, therefore, the respondents cannot be blamed for not complying with the principles of natural justice and the age determined by the Medical examination by the experts, deserves to be accepted and the impugned retirement order is liable to be upheld.

9. Having heard the learned counsel for the parties at length, this Court is of the opinion that the impugned orders retiring the petitioners prematurely, cannot be sustained. The age determined by the Medical experts as per Medical Report itself is approximate and the words "appears about 50 years" is contained in the said report, therefore, the age fixed as per medical report as no such date has been given in the medical opinion itself.

10. Learned counsel for the respondent Forest Department, has failed to satisfy this Court with any cogent reason for which the need of setting up of such Medical Board and medical opinion arose. No letter or office order requiring such medical examination to be held of determining the age, has been produced before this Court by the respondents. The said exercise, therefore, appears to be without any valid basis, nor the medical opinion giving only the approximate age of the person at the time of such examination, can be taken as final or conclusive proof of the exact date of birth. However, on the other hand, the affidavit/s giving the date of birth at the time of entry in the service, which was accepted by the respondent Department with full open eyes, and was so accepted for long number of years, cannot be suddenly brushed aside by the respondent-Forest Department.

11. Therefore, respectfully following the ratio decidendi of the judgment the coordinate bench of this Court in the case of Smt. Bheera (supra), the present writ petitions of the petitioners deserve to be allowed and the same are, accordingly, allowed. The impugned orders retiring the petitioners prematurely are set aside. No order as to costs. A copy of this order be sent to the concerned parties forthwith.

3. Accordingly, the present writ petition is also disposed of in same terms. No order as to costs. A copy of this order be sent to the parties concerned forthwith.