

(2010) 03 SHI CK 0164
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4958 of 2008

Smt. Jyoti Sharma and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Citation : (2010) 03 SHI CK 0164

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—Petitioner Amrit Kumari (now deceased) was working an employee of the Health Department of Himachal Pradesh. She was posted as a Staff Nurse in District Hospital, Hamirpur. The present dispute relates to her date of birth on the basis of which she was superannuated in the year 1998. She had filed her petition before the erstwhile Tribunal on 26th day of March, 1998 just four days before her retirement. The case of the Petitioner has been that she was appointed as A.N.M. in the Himachal Pradesh Medical Department on 9th August, 1967, vide appointment letter No. 3-136/63-Med-II. Her date of birth was recorded as 3rd March, 1947, based on, the Middle standard School Leaving Certificate issued on 29.4.1960 (Annexure P-1). Thereafter, she appeared in matriculation examined in the year 1985 under Roll No. 18258, but she was declared failed. The result-cum-detailed marks card (Annexure P-2) also reflected her date of birth as 3rd March, 1947. Even the seniority list for the year 1980 and thereafter had also shown the same date of birth. The change of date of birth from 3.3.1947 to 3.3.1940 was made by the Respondents, without any notice to her. It resulted in her superannuation, which is against the principle of natural justice.

2. In reply, the contention of the Respondents was that a complaint was received in the department that the date of birth of the Petitioner was fudged in the service record, on the basis of that an inquiry was conducted. Petitioner was

associated during the inquiry and afforded opportunity. Respondent stated during the enquiry that she was told by her mother that when her father Chunni Lal died, she was less than one year. The death certificate of her father was obtained, wherein his date of death was recorded 16th February, 1940. Thus, it was beyond comprehension as to how she claimed that she was born on 3.3.1947 and also that there was a tampering in the service record in the column of date of birth, which was most probably made at the time when she was transferred from Kangra to Hamirpur and service book was in transit between the two offices. Since the photocopy of the school leaving certificate with respect to the middle standard examination and the entries in the service record were found to be wrong and self created documents. Thus, her date of birth was ordered to be corrected as 3.3.1940 by the State Government and she stood superannuated on 31st March, 1998.

3. The State Administrative Tribunal was abolished. This petition alongwith other pending matters were transferred to the High Court.

4. During the pendency of the proceedings, the Petitioner died and vide order dated 28th October, 2009, passed by this Court, her legal representatives were brought on record.

5. Vide order dated 7.12.2009, this Court ordered to produce the record of the inquiry conducted by the Respondent regarding her age.

6. I have heard the learned Counsel for the parties and perused the inquiry report and also the service record of the Petitioner.

7. It is an admitted fact that during the course of the inquiry, the death certificate of the father of the Petitioner named Chunni Lal Sharma was also procured whereby, he has been shown to have died on 16.2.1940 and the initial service record of the Petitioner maintained by the office of Dy. Chief Medical Officer, Kangra at Dharamshala also reveals that against Col. No. 5, date of birth of Petitioner Amrit Kumari, written in words and figures was tampered with and overwritten as 3.3.1947 and also overwritten in words. A reference is also made therein that whatever date of birth was written therein above was verified from the middle school leaving certificate No. 2/34/80 dated 29th March, 1956 of S.D.A.V. Middle School Pohanj (District Kangra). The said school leaving certificate was not found tagged/ attached the service book. During the inquiry, the Petitioner was afforded an opportunity to produce the certificate to substantiate her version, but those certificates were not found in consonance with the various entries in the service record. For that matter, Annexure P-1 placed on record by the Petitioner in this petition also shows overwriting over the name and entry made in the figures in her date of birth and even its date of issue is 29.4.1960. Her date of admission is shown to be 1.3.1960 and she remained in the School only upto 31.3.1960 i.e. for one month. At that time, she has been shown to have been studied upto 8th standard and passed the examination and promoted to 9th standard. According to her, copy of this

certificate was placed at the time of entry in the service, but the date of issue of the said certificate has been depicted in the service record 29.3.1956 not 29.4.1960. The original certificate issued by the said school was not produced.

8. Another fact, which makes her claim doubtful, is that her father had died in the year 1940. The enquiry report reveals that she stated that at the time of death of father, she was less than one year. The date of death of her father Chunni Lal has not assailed or proved otherwise. Therefore, against these facts, she cannot be said to be born in the year 1947. She also did not produce any birth entry of the Panchayat when she had taken birth to substantiate her plea. It is also pertinent to note that the Chief Medical Officer, Hamirpur vide his letter No. Sansthan-81-3787 dated 2.4.1981 at page-134 of the enquiry file had intimated the Director Health Services that her name did not figure in the tentative seniority list of ANM's, and requested to include against S. No. 295. He had also supplied the details with respect to the Petitioner wherein her date of birth was depicted as 3rd March, 1940 and the date of appointment as 29th August, 1967. In the seniority list in 1984, her date of birth was also corrected by the Chief Medical Officer, Hamirpur to be 3rd March, 1940 and the final seniority list of the Petitioner when she was designated as Staff Nurse in the year 1988, her date of birth is 3rd March, 1940, which means till the year 1981, her date of birth stood recorded 3.3.1940 in the service record. The Inquiry Officer also found that there were three School Leaving certificates of the same year and class, one issued on 28.3.1956 as depicted in the service record, which was not available, other of 31.3.1960 and another one is dated 29th April, 1960 of the same School i.e. S.D.A.V. Middle School Pohanj (Jawala Mukhi).

9. Thus, for the foregoing reasons, the claim of the Petitioner cannot be accepted, more specifically, in absence of authenticated record of her birth and also in the light of the fact that her father had died on 16.2.1940 and she accepted this fact before the Inquiry Officer that she was said to be less than a year at that time. Therefore, her date of birth could not be 3.3.1947 as claimed by her. As she was also given due opportunity to prove her claim, but failed and the school leaving certificate and matriculation certificate were got up documents to create evidence. As such, petition fails and accordingly dismissed.

10. Enquiry file and service record be returned to the learned Additional Advocate General Shri A.K. Bansal.