

**(2005) 02 AHC CK 0083**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 6466 (S/S) of 2004**

Smt. Shanti

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 23-02-2005

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 45  
Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 45  
Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 45

**Citation :** (2005) 2 ESC 1042

**Hon'ble Judges :** A.K. Yog, J

**Bench :** Single Bench

**Advocate :** Rajendra Prasad Bharti, for the Appellant; R.D. Shahi, S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

A.K. Yog, J.—Heard Sri Rajendra Prasad Bharti, Advocate representing the petitioner and Sri R.D. Shahi Advocate/Standing Counsel appearing on behalf of the respondents.

2. Writ petition is finally heard and decided as all the parties are served, represented through counsels and also filed counter and rejoinder affidavits as provided under Chapter XXII Rule 2-II Proviso to Rules of Court.

3. This is a petition under Article 226 of the Constitution of India claiming writ of mandamus to direct the Chief Medical Superintendent, Virangana Avanti Bai Chikitsalaya, Lucknow (C.M.S.) to decide her representation dated 24.8.2004 (Annexure 3 to the writ petition) regarding her date of birth in the light of the medical certificate of age issued by the then Chief Medical Officer (C.M.O.) dated 23/27.6.1992 (Annexure 2 to the writ petition) and quash order dated 5.10.2004

(Annexure 4 to the writ petition) directing her to submit documents for preparation of pension papers on the ground that she will be superannuating w.e.f. 31.1.2005 on completing 60 years of age of retirement.

4. The petitioner was employed as Ward Aya vide order dated 9.1.1970. According to her at the time of her appointment her date of birth was not mentioned in her service book, she filed representation dated 24.8.2004 along with photo copy of medical certificate dated 23/26.6.1992 issued by Chief Medical Officer, Lucknow (CMO) as soon as she came to know that an effort was made under some conspiracy to retire her in January, 2005; was sent for said medical examination by the Chief Medical Superintendent of the hospital. C.M.O. as per radiologist report certified her age as 45 years in the said certificate dated 27.6.1992; respondent deciding her representation passed the impugned order; hence the writ petition.

5. Court passed two orders on two dates, which read :

"Hon. Devi Prasad Singh, J.

The submissions of the learned Counsel for the petitioner is that in the year 1992, the Chief Medical Officer, Lucknow has verified petitioner's age as 45 year, accordingly, the petitioner is entitled to continue in service upto the year 2007. Now, by the impugned order, petitioner has been informed that he shall retire from service on 31st of January, 2005.

4 weeks" time is allowed to file Counter Affidavit and a week for Rejoinder Affidavit. List on 15th of December, 2004. On the next date, learned Standing Counsel shall produce the record including petitioner's service book. In the meantime, the competent authority is directed to decide petitioner's representation by passing a speaking and reasoned order, copy of which has been filed as Annexure 3 to the writ petition.

Date : 1.11.2004

Sd/-".

"Hon. Devi Prasad Singh, J.

"In pursuance to order passed by this Court records have been produced before me. The service book shows that in different handwriting in green ink subsequent entry has been made by Chief Medical Officer in the service book. It appears that at the time of filling of service book the different age of petitioner was recorded but at later stage it has been changed. While making entry in different ink prima facie it seems to be done at later stage Chief Medical Officer had not recorded the date when it was done.

Let the personal affidavit be filed by Chief Medical Officer Virangana Avant Board Mahila Chikitsalaya, Lucknow within two weeks indicating the facts and circumstances and actual date when entry has been made in the service book. The Chief Medical Officer shall explain all these facts.

Let entire record including the petitioner's appointment letter and all other relevant material shall produce before this Court on 21.1.2005. On the next date of listing in case Chief Medical Officer does not file affidavit he/she shall appear in person to assist the Court. However, in case affidavits may be filed, any officers shall appear in person who is well versed with the present controversy.

Date : 15.12.2004

Sd/...."

6. Original service book produced by the learned Standing Counsel before me. Chief Medical Superintendent was also present in Court when the matter was heard.

7. Perused the original service book of the petitioner along with the learned Counsels for the parties.

8. Entry of name etc. made initially, when the said service book was opened in 1970/71, are by hand in ink (in Hindi). There is another entry in English made by hand reads "About 24 years" under illegible signature and stamp with handwritten dated 23.12.1971 by the then Senior Medical Superintendent, Mahila Hospital, Lucknow. There is overwriting/tampering of original figure and an attempt is made to read original "24" as "34"--by attempting to overwrite over "2" in said entry. This entry, as per service book, has been scored off by "green ink" with the signature without date of the present Superintendent-in-Chief, Dr. (Smt.) Sharda Chand, who has sworn the counter affidavit. It is to be noted that if we take entry "24" as correct then on 23.12.1971, the birth year of the petitioner comes to 1947. The other endorsements in green ink made by Dr. (Smt.) Sharda Chand under her signature again without date on this page of the service book read--"Age according to medical certificate of M.S. on 15.1.1970 was 25 years" and "According to C.M.O., Lucknow MC her age is 45 years on 23.6.1992.... Calculation her date of birth is 1945". In short, M.C. stands for Medical Certificate and M.S. for Medical Superintendent. Photocopy of the said Medical Certificate of fitness for Government service by M.S. dated 15.1.1970 under Rule 10 of Fundamental Rules is Annexure C-2 to the counter affidavit. Photocopy of this 1st page of service book containing the above entries is Annexure C-1 to the counter affidavit filed by the respondents.

9. Perusal of the alleged Medical Certificate of Medical Superintendent dated 15.1.1970 (Annexure C-2 to the counter affidavit) shows that it is not the Medical Certificate of Age. It is titled--"Certificate of fitness for Government service". It recites--"....The candidate's age according to her own statement is 25 and by appearance 25 years." The said certificate, under Rule 10, Fundamental Rules, has no relevance to ascertain age as such. It only refers to medical examination to ascertain and verify physical fitness.

10. Fundamental Rule 10, for ready reference, quoted below :

"General Conditions of Service

10. Except as provided by this rule, no person may be substantively appointed to a permanent post in Government service without a medical certificate of health, which must be affixed to his first pay bill. The medical certificate shall be furnished in such form and should be signed by such medical or other officers as the Governor may, by general rule or order, prescribe. The Governor may, in individual cases dispense with the production of a certificate, and may, by general order exempt any specified class of Government servants from the operation of this rule.

Order of the Governor of regarding Rule 10.

Once a person is asked to produce a medical certificate of fitness for entry into Government service and has actually been examined and declared unfit, it is not open to the appointing authority to use its discretion to ignore the certificate that has been produced."

11. In the case of Adhishasi Abhiyanta Electricity Rihand and Hydel Civil Division U.P.S.E.B. Allahabad and Ors. v. Shitala Prasad and Anr. 1993 HVD 4 325 (V.K. Khanna and G.P. Mathur, JJ.), Special Appeal No. 383 of 1983, while dealing with Fundamental Rule 10 (quoted above) Court held that medical fitness certificate cannot be treated as certificate of age, which can be issued after X-Ray/radiological test report.

12. For convenience, Paras 8 and 9 of the said judgment in the case of Adhishasi Abhiyanta Electricity Rihand and Hydel Civil Division U.P.S.E.B. (supra) are quoted below :

"8. In our opinion the medical fitness certificate dated 25.7.1974 could not be treated as an opinion of the doctor regarding the age of the petitioner. The certificate has been given in the proforma prescribed under Fundamental Rule 10. The doctor had examined the petitioner in order to ascertain as to whether he suffered from any communicable disease or otherwise and whether he had any constitutional weakness or body infirmity which would constitute a disqualification for employment in the Hydel department. The doctor was not asked or required to give an opinion regarding the age of the petitioner. There are well known scientific methods to ascertain the age of a person and ossification of bones gives a fairly accurate ideal regarding the age. However, for this purpose x-ray examination has to be performed. In case the doctor had been asked to give his opinion regarding the age of the petitioner he would have performed necessary tests including x-ray examination etc. and would have also given the scientific data on the basis of which he would have formed his opinion about the age. The doctor while opinion about the age of a person is in the nature of an expert and in absence of necessary scientific date, his opinion would carry little weight in view of Section 45 of Evidence Act. We are clearly of the opinion that the medical fitness certificate dated 25.7.1974 could not at all be treated as an opinion of the doctor regarding the age of the petitioner. As a consequence, the said document could not be used for the purpose of

determining his age.

9. Apart from the view which we have taken that the medical fitness certificate is not an evidence regarding age of the petitioner, we are also of the view that the exercise regarding ascertaining the age of the petitioner in absence of High School or a birth certificate issued by the local authority had. to be done at the time of first appointment while making the entry regarding his date of birth in the service book. It was certainly open for the petitioner to have obtained a certificate from the Medical Officer approved by the Board regarding his age. However, this was not done and no certificate of Medical Officer regarding his age was obtained. The petitioner accepted that his date of birth was 5.1.1932 when entry regarding the same was made in the year 1964 in his service book as the said entry was signed by him and also by the Executive Engineer. Again he made no objection regarding his date of birth when the same entry was repeated in the year 1975 and was signed by him and the Executive Engineer. In these circumstances, the correction made in the service book by scoring out the date "5.1.1932" and writing "25.7.1936" on 18.8.1987 by the Executive Engineer is clearly illegal. Learned Counsel for respondent No. 1 has failed to show any provision which authorised or empowered the Executive Engineer to make correction or alteration in the service book. In view of Sub-rule (2) of Rule 30 the correction made in the date of birth is not only illegal but is also prohibited. The altered entry is, therefore, non-est in the eyes of law and cannot be taken notice of for any purpose whatsoever."

13. Coming back to the service book, endorsement in green ink indicating "1945" as birth year of the petitioner is per se incorrect and wrong. The C.M.O. issued age certificate on 23.6.1992 and in his own hand, mentioned that by appearance and on the basis of the "Radiological Report", her age appeared to be 45 years. On the said certificate, there is another endorsement--"X-Ray No. 97 dated 26.6.92 and manifiium sternum showed that fission with body of sternum."

14. Calculation will show that if the petitioner was 45 year old in June 1992 then she must have been born in the year 1947. To that extent, the endorsement of the year 1945 made by Dr. (Smt.) Sharda Chand (as quoted above) is under misconception/ miscalculation and against record.

15. In the service book of the petitioner certain documents, including original certificate of M.O. dated 27.6.1992, are pasted. Reference may be made to them also.

16. There is a carbon copy of a letter (in Hindi) dated 19.6.1992, No. Isthakaran/92 (Chaturth Shreni)/511, written by the Superintendent of the Mahila Hospital to C.M.O., Lucknow. The subject shown in the letter refers to issue of age certificate to Shanti Aya (Emergency).

17. There is also original application (in Hindi) dated 26.6.1992 (apparently incorrect as it refers to C.M.O. certificate dated 27.6.1992) purporting to be

written by the petitioner with her thumb impression. It is addressed to the C.M.S. of the hospital stating that she was submitting medical certificate No. 7/92 dated 27.6.1992 as directed by the said authority. The said application, however, does not bear any endorsement of acknowledgment or the date of receipt by the Officer/ Clerk concerned.

18. The original medical certificate of the C.M.O. dated 23/27.6.1992 pasted in service book refers to the aforesaid letter No. 511 dated 19.6.1992.

19. The service book at page 19 contains an endorsement made by red ball point-which shows that the petitioner was confirmed vide order No. 210 dated 2.6.1992. This shows that question of her age had arisen in the year 1992.

20. It is curious and one finds no reason as to why in service book of the petitioner endorsements made by the Superintendent-in-Chief, Virangana Avanti Bai Mahila Hospital, Lucknow bear no date. Also no care taken to mention in the service book while scoring off the entry of age (which was tampered/over-written) that why it was done and on what date. Respondents do not come out with a case in their counter affidavit that any action has been taken against the erring official/s.

21. It is to be noted that Dr. (Smt.) Sharda Chand (Superintendent-in-chief), who had made the endorsement in green ink in service book and has also filed counter affidavit in this petition, does not dispute the pasting and existence of the above documents in the service book. As noted above, she does not claim to have initiated either an enquiry in this matter. The relevant extracts, if concerning paras 6, 7 and 9 of the counter affidavit sworn by Dr. (Smt.) Sharda Chand are quoted :

"....It is further stated that the age of the petitioner was already recorded in her service book on the basis of her statement and on the basis of the certificate of the Medical Superintendent and there was no occasion to refer the petitioner for age certification to the Chief Medical Officer nor the opposite parties in fact send the petitioner for age verification..... and presented the same in the hospital only on 24.8.2004...."

".....It is true that on 24.8.2004, for the first time the petitioner has presented the certificate dated 27.6.1992 when the petitioner received notice that she will be retired in January, 2005..."

".....It is absolutely incorrect that the opposite parties at any time referred the petitioner to the Chief Medical Officer for age certification. The age of the petitioner has been entered in the service record at the time of entry in the service as declared by the petitioner which is not liable to be altered at the fag end of retirement...."

22. How Dr. (Smt.) Sharda Chand could make such averments on oath and offer a flimsy defence--against record--when she herself had made endorsements in the service book relying upon C.M.O's medical certificate as noted above.

23. If record is not properly maintained or there is fabrication or forgery by tampering entries/record, (like service book and confidential record of an employee) enquiry ought to be held and erring official must be brought to book and suitable action taken to check such occurrence in future.

24. Unless there are cogent reasons to come to the conclusion that the employee himself was responsible for tampering the same, no adverse inference is to be drawn against the employee and must not to be nonsuited for the same.

25. In the undisputed facts of the present case, one is led to believe the version given by the petitioner, when question of confirmation had arisen she was directed by the then Medical Superintendent of the hospital, she got herself examined by the C.M.O. who issued the medical certificate dated 23/27.6.1992 regarding her age on the basis of X-Ray/opinion of Radiologist in normal course in the year 1992 itself. Dr. (Smt.) Sharda Chand, as she states in the counter affidavit that it was filed on 24.8.2004 i.e. the date of petitioner's representation (Annexure 3 to the writ petition), should not have made the endorsements (in green ink) as quoted above in this judgment.

26. In view of the above, this Court has no reason to disbelieve the C.M.O's certificate, which has been taken cognizance by Dr. (Smt.) Sharda Chand by making endorsement in the service book of the petitioner. There appears to be no good reason why the petitioner will keep C.M.O's certificate dated 23/27.6.1992 with her and/or otherwise not submit at the first opportunity to the Medical Superintendent. In paragraph 6 of the counter affidavit or otherwise the respondents do not dare to challenge authenticity or genuineness of the said certificate. The petitioner in her representation dated 24.8.2004 (Annexure 3 to the writ petition) clearly mentions that she was submitting a true copy of the said C.M.O's certificate. Again respondent Dr. (Smt.) Sharda Chand offers no explanation as to why she did not dispute its receipt, pass orders on that representation and rejected it on the alleged ground. The defence taken by the respondents is evidently against record, has no substance and cannot be accepted.

27. In view of the above, the inescapable conclusion is that the petitioner was born in the year 1947. If that be so, the petitioner will attain the age of superannuation after, completing 60 years in the year 2007 only. Now the question is as to which is the month of the year 2007. The medical certificate issued by the C.M.O. is dated 23/27.6.1992. Therefore, reasonably one can take 6th month of the year. Also yet for another reason, 6th month can be taken as the month of birth and that is--it should be neither starting nor end of the year and one can reasonably choose mid of the year.

28. From the above, it is evident that (i) there is no denial of Green Ink Endorsement by Dr. (Smt.) Sharda Chand in the Counter Affidavit sworn by her in this writ petition.

(ii) There is no denial of that photocopy of C.M.O's Certificate dated 27.6.1992

was not endorsed by the petitioner with her representation dated 25.4.2004 (Annexure-3 to the writ petition), as stated therein.

(iii) There is no denial of existence or genuineness of C.M.O's Certificate of Age dated 27.6.1992 or of X-Ray report dated 22.6.1992--mentioned in that certificate.

(iv) There is no pleading or submission that said C.M.O's Certificate of Age dated 27.6.1992 has been inserted on or after petitioner's representation dated 25.4.2004 (Annexure-3 to the writ petition).

29. In the result, the writ petition is allowed. The order contained in the letter dated 5.10.2004 passed by the C.M.S., Virangana Avanti Bai Mahila Chikitsalaya, Lucknow (Annexure 4 to the writ petition) is hereby set aside. It is directed that the petitioner shall be allowed to continue without break (due to impugned order) in service upto 30th June, 2007 with all consequential privileges and benefits. In the facts of the case, I make no order as to costs.