

(2003) 07 AHC CK 0260
In the Allahabad High Court
Case No : Special Appeal No. 600 of 2003

Smt. Shanti Devi

APPELLANT

Vs

Principal, Smt. Sukhdevi Balika Uchchar Madhyamik
Vidyalaya and Others

RESPONDENT

Date of Decision : 31-07-2003

Acts Referred:

Citation : (2003) 6 AWC 4708

Hon'ble Judges : Tarun Chatterjee, C.J.; Vineet Saran, J

Bench : Division Bench

Advocate : Gajendra Pratap and A.K. Singh, for the Appellant; R.B. Singhal and Devendra Kumar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Chatterjee, C.J. and Vineet Saran, J.—By consent of parties this Special Appeal is treated as on day's list and taken up for hearing.

2. This is an appeal from a judgment and order of a learned Judge of this Court in a writ petition, being Civil Misc. Writ Petition No. 50763 of 2000, by which the writ application of the Appellant was rejected which was moved for correction of date of birth in her service records.

3. The Appellant joined the service as a class IV employee and served for several years. It is not in dispute that in the service record of the Appellant, her date of birth was shown as 27.10.1940 and the signature of the Appellant was also made on the service book. Subsequent to the entry of the writ Petitioner-Appellant in the employment, her date of birth was verified on several dates and the writ Petitioner-Appellant signed and verified her date of birth as 27.10.1940. Just before her retirement, the writ Petitioner-Appellant produced a certificate of the Gram Pradhan showing that her date of birth was 27.10.1946 and not 27.10.1940. When an enquiry was held by the District Inspector of Schools, Etawah, the relevant documents for the purposes of proving the date of birth

were not produced and, therefore, the District Inspector of Schools, Etawah had arrived at a conclusion that her date of birth was 27.10.1946 as claimed by the writ Petitioner-Appellant and not 27.10.1940. The learned Judge while rejecting the writ application came to the conclusion of fact that since the writ Petitioner herself has given her date of birth as 27.10.1940 which was verified by her several times subsequently, it is not open for the writ Petitioner to say at the time of her retirement or just before that, that her date of birth was 27.10.1946 and not 27.10.1940. Feeling aggrieved against the judgment and order of the learned Judge, this appeal has been preferred.

4. We have heard Sri Gajendra Pratap, learned Counsel appearing for the Appellant and Sri R. B. Singhal, learned Counsel appearing for the Respondents. We have also carefully examined the order passed by the learned Judge and the material available on the record.

5. After hearing the learned Counsel for the parties, we are of the view that in the facts and circumstances of the case there is no ground for us to interfere with the order of the learned Judge. Admittedly at the time of entry of the Appellant in service, she herself had given her date of birth as 27.10.1940 and not 27.10.1946. In fact, during her service career she had verified the same date of birth at least ten times. Just before her retirement, this correction of date of birth was asked for by the writ Petitioner-Appellant on the basis of an enquiry report submitted by the District Inspector of Schools, Etawah. Sri Gajendra Pratap, learned Counsel for the Appellant, however, submitted that the learned Judge was not justified in rejecting the writ application without considering the report submitted by the Enquiry Officer, i.e., District Inspector of Schools, Etawah who came to a conclusion of fact that the date of birth of the Petitioner-Appellant was 27.10.1946 and not 27.10.1940. We are unable to accept this contention of Sri Gajendra Pratap, learned Counsel for the Appellant. As noted earlier, it is an admitted position that the date of birth of the Appellant was entered in the service book as 27.10.1940 at the time of her entry in service. Subsequently this date of birth in the service records was verified by her at least ten times. Such being the position, it was not open for the Appellant to claim a different date of birth just at the time of her retirement. The enquiry report which the learned Counsel for the Appellant has relied on had been considered by the learned Judge in the impugned judgment and it was noted that the District Inspector of Schools, Etawah while making an enquiry found that the date of birth was 27.10.1946. In our view, the learned Judge is fully justified in rejecting the writ application as we find that the said conclusion of fact, without considering the service record and the verification made on different dates by the Petitioner-Appellant, cannot be relied on for the purposes of coming to a finding of fact as to whether the date of birth of the Appellant was 27.10.1940 or 27.10.1946. The law is well settled and the Hon'ble Supreme Court in various decisions has already laid down the law that it is not open for a person to apply for correction of the date of birth just at the threshold of his retirement from service. Such being the position, we do not find any force in the argument of Sri Gajendra

Pratap.

6. No other point was raised.

7. Accordingly, this appeal is dismissed summarily. However, there will be no order as to costs. If the writ Petitioner-Appellant approaches the concerned authority for releasing her pensionary benefits and other benefits to which she is entitled under law, in that case the authority shall release the said pensionary benefits and other benefits in accordance with law within a period of six months from the date of her approaching the authority.

8. We, however, keep it on record that the writ Petitioner-Appellant, on the basis of the interim order passed by this Court, has worked in Smt. Sukhdevi Balika Uchchattar Madhyamik Vidyalaya, Etawah and also got salary for such period. The authority shall take into consideration liberally as to whether the said amount which the writ Petitioner-Appellant has already got, can be waived because she has also worked on the basis of the interim order passed by this Court.