

(2009) 03 AHC CK 0172
In the Allahabad High Court

Smt. Zeenat Begaum

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0172

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present writ petition has been filed questioning the validity of order dated 14.07.2000 passed by Superintending Engineer, Minor Irrigation Division, holding the date of birth of the petitioner to be 21.08.1943 and the validity of order dated 15.01.2002 passed by Executive Engineer, Minor Irrigation Division, directing superannuation of petitioner on the basis of the aforementioned date of birth.

2. Brief background of the case, as disclosed in the writ petition is that petitioner's husband Menhdi Hassan was Boring Technician in Minor Irrigation Department, Kanpur. He expired on 03.05.1985. Petitioner moved application for grant of succession certificate to his legal heirs and the said certificate was issued on 21.08.1985. Thereafter, petitioner applied for grant of compassionate appointment, and in this regard she appeared before the Chief Medical Officer, Kanpur and the Chief Medical Officer on 04.07.1988 on the basis of petitioner's own statement and on the basis of general appearance, mentioned her age to be 35 years. Thereafter petitioner was offered compassionate appointment and on the basis of certificate dated 04.07.1988 her age in the service record was recorded as 35 years. While petitioner was continuing in employment, audit objections were raised; thereafter show cause notice was issued to the petitioner on 18.12.1988, and petitioner was asked to produce relevant evidence. Thereafter, order dated 14.07.2000 had been passed clearly mentioning therein that the age of her elder son was 23 years, as such accepting her age to be

thirty five years on 04.07.1988, was an impossible situation, and cannot be conceived of; in this background 21.08.1943 was accepted as her date of birth. After the said decision had been taken on 14.07.2000, petitioner represented her matter on 10.10.2000, on which various correspondences have been entered upon. Letter was written by Chief Medical Officer, Etawah, reiterating the same age and in the meantime, petitioner has attained the age of superannuation as per the said age i. e. 21.08.1943 and she has been sought to be superannuated. At this juncture present writ petition has been filed.

3. Counter affidavit has been filed disputing the averments made in the writ petition and taking stand that correct decision has been taken. To the said counter affidavit rejoinder affidavit has been filed disputing the averments made therein. It has been further reiterated that the Chief Medical Officer, Etawah has again reiterated the same date of birth, as such writ petition deserves to be allowed.

4. Sri M.M.D. Agrawal, learned Counsel for the petitioner, contended with vehemence that under Rule 2 of the U.P. Recruitment to Service (Determination of Date of Birth) Rules, 1974, since the petitioner had not passed High School or equivalent examination at the point of time of entry into government service, her date of birth as recorded in the service book on the basis of the report of the Chief Medical Officer would be deemed to be correct date of birth and the same could not have been changed without issuing any notice to the petitioner, as such orders impugned are unsustainable and liable to be quashed. In support of his contention, learned Counsel has placed reliance on the judgment of Hon''ble Apex Court in the case of G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, and the judgment of this Court in the case of Surya Lal Singh v. Superintending Engineer VICIRCLE, P.W.D. Gorakhpur and Ors. (2007) 4 ESC 2445 (All).

5. Countering the said submission, learned Standing Counsel, on the other hand, contended that this is a glaring case of manipulation, and on admitted position finding of fact has been returned and qua the said finding of fact no documentary evidence has been filed to show and substantiate that the said findings are perverse or unreasonable, as such no interference be made.

6. After respective arguments have been advanced, factual position which emerges in the present case, is that petitioner''s husband died in harness, and after his death application was moved for grant of succession certificate, which was issued and in the said certificate issued on 21.08.1985 age of petitioner was categorically mentioned as 42 years and the age of her elder son was mentioned as 23 years and the age of her children was mentioned as 14 years, 13 years, 11 years and 7 years, respectively. At no point of time veracity of the said succession certificate was questioned, rather benefit of the same was derived by the petitioner. At the time of seeking compassionate appointment, petitioner appeared before the Chief Medical Officer and on the basis of her statement and general appearance, petitioner''s age was recorded as 35 years and based on the

same entry was made in the service book. Subsequent to the same audit objections were raised and thereafter on 18.12.1988 notice was issued to the petitioner, to which the petitioner submitted her reply, mentioning therein that on the basis of the report of the Chief Medical Officer, her age had been recorded, and prayer was made that appropriate decision be taken. Thereafter, the authority concerned taking into account the fact that age of petitioner's elder son was 23 years and in case the age of the petitioner was taken to be 35 years, then it would be a case of impossible situation, as such he proceeded to record the age of birth of the petitioner as 21.08.1943. In the present case this much is apparent that opportunity had been afforded to the petitioner before proceeding to make changes in her date of birth. The petitioner cannot take stand before this Court that opportunity of hearing had not been provided to her before proceeding to make changes in her date of birth. In the entire body of writ petition, except for the statement of fact mentioned in paragraph 6 that ages of all persons mentioned therein were false and recorded on conjectures without any enquiry or proof, no proof, whatsoever, has been furnished to show and substantiate as to what was actual age of Abrar, especially when the authority concerned has proceeded to mention his age to be 23 years. No documentary evidence has been brought on record to show and substantiate as to what was actual age of Abrar. Even after passing of order, in the representations so moved, no averment qua the actual age of Abrar has been mentioned. The finding of fact recorded cannot be said to be arbitrary or unreasonable warranting interference by this Court in exercise of its authority of judicial review, especially when the said finding does not appear to be perverse or unreasonable.

7. Now coming to the judgment of Hon'ble Apex Court in the case of G.M. Bharat Cooking Coal Limited, G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, , wherein view has been taken that in case of dispute of date of birth of an existing employee, who has neither a Matriculation Certificate/Secondary School Certificate nor a statutory certificate, the report of the Medical Officer has to be accepted. There is no dispute to the said proposition, but here in the present case clinching evidence has come on record, demolishing the case set up in medical certificate, as such report of the Medical Officer cannot be relied upon, especially when said medical report was not based on any medical examination; it was based merely on the own statement of the petitioner and general appearance. Thus, in the facts of the present case, the judgment relied upon by learned Counsel for the petitioner will not come to rescue of the petitioner. The other judgment in the case of Surya Lal Singh v. Superintending Engineer VICIRCLE, P.W.D. Gorakhpur and Ors. (2007) 4 ESC 2445 (All), which has been cited by the learned Counsel for the petitioner, is in respect of providing opportunity to the incumbent before proceeding to make changes in the date of birth. This Court in the case of Shiv Charan v. Executive Officer 2006 (6) ADJ 310, has taken the view that the date of birth can be permitted to be changed in case of fraud and misrepresentation, and there is clinching evidence to support the same, and if should be done after affording

opportunity of hearing. Here, in the present case opportunity has been provided and on the basis of material available on record, changes have been made. The facts of the present case are clearly distinguishable, and once finding of fact is there that the age of mother has been recorded as 35 years and the age of her elder son as 23 years, then it is impossible to conceive of such date of birth, as has been claimed by the petitioner. This was as such clearly a case of misrepresentation, as such correction in petitioner's date of birth has been rightly done, keeping in view over all facts and circumstances of the case, which requires no interference.

8. Consequently, writ petition lacks substance, and the same is dismissed.

9. No order as to costs.