

(2007) 09 UK CK 0008
In the Uttarakhand High Court
Case No : Special Appeal No. 143 of 2007

Subhash	Vs	APPELLANT
G.B. Pant University and Others		RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 8 UC 804

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Kishore Kumar, for the Appellant; Rajendra Dobhal, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta C.J.

1. Sri Kishor Kumar, Advocate for the Appellant Sri Rajendra Dobhl, Advocate for the Respondents. They are heard on admission.
2. Appellant Subhash has filed this appeal under Chapter VIII Rule 5 of High Court Rules against the impugned judgment dated 18-08-2007 passed in Writ Petition No. 1104 of 2007 (S/S).
3. Appellant Subhash filed the writ petition for the following reliefs:
 - i. Issue a writ, order or direction in the nature of certiorari quashing the order dated 31 -05-2007 contained in Annexure 9 to the writ petition.
 - ii. Issue a writ, order or direction in the nature of certiorari quashing the order dated 31 -05-2007 by which the representation of the Petitioner for medical examination is rejected by the Respondents.
 - iii. Issue a writ, order or direction in the nature of mandamus commanding the Respondent / university get conducted the medical examination of Petitioner

from the medical officer for determination of exact age of the Petitioner, and give the benefit of the age to the Petitioner, and the Petitioner may be deemed to be retired in pursuance of medical report.

iv. Pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

v. Award the cost of writ petition to the Petitioner.

4. The Petitioner, thus in substance, was seeking correction of his date of birth as recorded in the service-book.

5. Petitioner Subhash retired from the service of the Respondent University on 31-05-2007 after attaining the age of 60 years on the basis of the date of birth recorded in his service-book as 01-06-1947. The Petitioner claiming his correct date of birth as 02-07-1952 filed an application on 26-04-2006 for correction of the date of birth in his service-book. The Petitioner's application was dismissed by the University Authorities on 30-06-2006.

6. The submissions advanced on behalf of the Petitioner did not find favour with the writ Court leading to the dismissal of the Petitioner's writ petition.

7. Sri Kishore Kumar, the learned Counsel for the Appellant, vehemently argued that the University authorities did not provide sufficient opportunity to the Petitioner / Appellant to establish that his correct date of birth was 02-07-1952. The learned Counsel further submitted that the University Authorities ought to have directed medical examination of the Petitioner for ascertaining his correct age.

8. Sri Rajendra Dobhal, the learned Counsel for the Respondents, on the other hand, supported the impugned judgment and submitted that the correction in the date of birth was sought at the fag end of the Petitioner / Appellant's service career and no reliable evidence was adduced before the University in support of the date of birth claimed by the Petitioner/Appellant.

9. The Apex Court while considering the permissibility of entertaining request for correction of date of birth in the service record at the fag end of the service career, in the case of *State of U.P. and Another Vs. Shiv Narain Upadhyaya*, observed in para 6:

6. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice of retirement, and it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution or by filing applications before the Administrative Tribunals

concerned, or even filing suits for adjudication as to whether the date of birth recorded is correct or not.

10. The same view was reiterated by the Apex Court in the case of Coal India Ltd. and Anr. v. Andhendu Bikas Bhattacharjee and Ors. reported in (2005) 12 SCC 201 wherein it was observed in para 8 of the judgment:

8. Thereafter, in the year 1995 he applied to the Company to change the date of birth on the basis of duplicate matriculation certificate obtained by him. It is well settled that an employee will not be permitted to apply for change of date of birth at the fag end of his service career. In the instant case we do not know on what basis after 38 years the Secondary Education Board in Bangladesh corrected the matriculation certificate. This is essentially a question of fact, and in any case the High Court ought not to have exercised its writ jurisdiction to determine the real date of birth. We are of the view that the High Court was in error in allowing the writ petition filed by the Respondent and directing Coal India Limited, the Appellant herein, to change the date of birth of the Respondent from 31-12-1938 to 26-04-1943. We, accordingly, set aside the impugned order of the High Court of Calcutta.

11. Reverting to the case in hand, the Petitioner / Appellant, admittedly, for the first time applied for correction of his date of birth on 26-04-2006 knowing well that he was to retire on 31-05-2007 on the basis of the date of birth recorded in his service-book as 01-06-1947. It is also relevant here to mention that for the same relief, the Petitioner / Appellant had filed a civil suit, which was dismissed by the trial Court and the dismissal of the suit was affirmed by the appellate Court. The learned Counsel for the Appellant could not point out any clinching evidence to establish that the correct date of birth of the Appellant was 01-07-1952 as claimed by him.

12. For the foregoing reasons, we do not find any infirmity in the impugned judgment, which may warrant interference in this special appeal.

13. The Special Appeal, therefore, is liable to be dismissed and is hereby dismissed summarily.