

(2010) 10 SHI CK 0153

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 16197 of 2008 (OA No. 3316 of 2007 and CWP (T) No. 460 of 2008 (OA No. 480 of 2008)

Subhash Chand Sharma

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Citation : (2010) 10 SHI CK 0153

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Kuldip Singh, J.—This judgment shall dispose of CWP (T) No. 16197 of 2008 and CWP (T) No. 460 of 2008 as common question of law and facts are involved in both the petitions. In fact both the petitions are filed by one and the same person.

CWP (T) No. 16197 of 2008

2. The petitioner in the petition has prayed that it may be held that petitioner is entitled to continue in service till 31.12.2007 as per his matriculation examination certificate and his pension dues may be paid to him accordingly. The petitioner has also claimed damages to the tune of Rs. 10,000/- from respondents for causing harassment to him.

3. The case of the petitioner is that he was selected as JBT teacher and appointed on temporary basis vide District Education Officer, Kullu office order dated 12.9.1969 and he joined as such on 16.9.1969. The petitioner was regularly appointed on 7.11.1970 and he joined as such on 20.11.1970. The petitioner after selection as JBT had submitted his original documents including matriculation certificate to the District Education Officer, Kullu, in his service book the date of birth of the petitioner was recorded as 2.12.1949 which was signed by petitioner and counter-signed by District Education Officer, Kullu/Kangra.

4. The petitioner got some promotions and while working as Centre Head Teacher

at Govt. Primary School, Sakri he received a letter dated 7.4.2007 from respondent No. 4 directing the petitioner to produce his original certificates before respondent No. 3. The petitioner supplied the documents as directed. The respondent remained silent for about six months. On 18.10.2007 respondent No. 3 issued notice to the petitioner informing him that inquiry conducted by Subhash Chand Gupta, Assistant Director, the difference of date of birth was found in the school register and matriculation examination certificate of the petitioner, he was directed to file reply to the notice. The petitioner submitted reply. On 10.12.2007 letter dated 5.12.2007 was endorsed to petitioner regarding the date of birth of the petitioner in service book indicating that as per entries in the school register the date of birth of petitioner is 20.12.1948 and according to matriculation examination certificate the date of birth of the petitioner is 2.12.1949 and, therefore, same can not be considered valid date of birth. In these circumstances, petitioner filed original application No. 3316/2007 in the erstwhile Tribunal which has been registered in this Court as CWP(T) No. 16197 of 2008.

5. The respondents contested the petition by filing joint reply and have submitted that petitioner was appointed as JBT teacher in the year 1969 in Kullu District. A complaint against the petitioner was lodged by one Pawan Kumar Sharma for changing his date of birth from 20.12.1948 to 2.12.1949. The inquiry was entrusted to the Assistant Director Elementary Education, Kangra at Dharamshala, who concluded that as per admission and withdrawal register of the school the date of birth of the petitioner has been changed from 20.12.1948 to 2.12.1949. On the basis of the inquiry report of the Inquiry Officer, show cause notice was issued to petitioner for intended action. The petitioner submitted his reply and after considering the reply it was held that date of birth of the petitioner was changed from 20.12.1948 to 2.12.1949. The respondents have contested the remaining claim of the petitioner and prayed for dismissal of the petition.

CWP (T) No.460 of 2008

6. The petitioner has prayed for quashing of Annexure A-1 dated 13.2.2008, Annexure A-2 and Annexure A-3 dated 11.2.2009 which have deprived the petitioner to receive the DCRG amounting to Rs. 3,50,000/-. The petitioner has also prayed damages for the illegal action of the respondents.

7. The further relevant facts are that petitioner after completing his Matriculation examination from the Punjab University and J.B.T. Training joined as JBT teacher on 16.9.1969. He was promoted as Head Teacher on 8.1.2002 and Centre Head Teacher on 2.12.2004. The petitioner continued to work uninterruptedly till 2006, all of a sudden the petitioner was called upon to produce his original matriculation examination certificate by respondent No. 4 before the respondent No. 3 on 9.4.2007. The petitioner supplied the copy of matriculation certificate accordingly. Thereafter, the petitioner received notice from respondent No. 3 challenging the veracity of the matriculation certificate of the petitioner that date

of birth given in the matriculation certificate of the petitioner is wrong. The petitioner submitted reply to the notice but without considering the reply of the petitioner respondent No. 2 issued memo dated 27.11.2007 Annexure A-10 observing that date of birth of the petitioner is 20.12.1948. The respondent No. 4 ordered the retirement of the petitioner vide office order dated 13.12.2007 Annexure P-12 w.e.f. 31.12.2006.

8. The petitioner had filed O.A. No. 3316 of 2007 in erstwhile Tribunal. The Tribunal stayed the operation of retirement of the petitioner and allowed him to retire on 31.12.2007 instead of 31.12.2006. The respondents instead of complying the order of the Tribunal without any valid reason with-held the DCRG of the petitioner, therefore, the petitioner has filed the present petition on the ground that respondents have no right to withheld the payment of DCRG of the petitioner. The pension and pensionary benefits are not the bounty which can be withheld by the employer. The payment of DCRG cannot be with-held except as per CCS Pension Rules but the case of the petitioner does not fall under those rules for withholding DCRG. The petitioner has worked upto 31.12.2007 and under no circumstances the respondents can withheld the DCRG of the petitioner.

9. The petition has been contested by the respondents by filing joint reply. In the reply, it has been submitted that the petitioner had joined the department as JBT teacher in the year 1969 and was to superannuate on 31.12.2006 as per date of birth entered in his service book. The petitioner never questioned the entry of his date of birth in the service book till 2006 when a complaint against him was lodged by one Pawan Kumar for his alleged act of changing the date of birth. The procedure for correction of date of birth of an employee has been prescribed in para 7.1 of the H.P. Financial Rules Vol.-I where a limit of two years has been prescribed. It has been submitted that respondent No. 4 has rightly with-held the DCRG of the petitioner amounting to Rs. 3,50,000/-. In view of the inquiry report submitted by the Assistant Director, the petitioner should have been retired on 31.12.2006. The petitioner was rightly relieved from the service as he tampered with the record in respect of his date of birth in order to get one year advantage of service.

10. The petitioner has filed a rejoinder and denied the defence projected by respondents No. 1 to 4. He has denied that he had tampered his service book. The stand of the petitioner is that his date of birth 2.12.1949 recorded in his service book is correct and he has even placed extract of service book on record where his date of birth is recorded as 2.12.1949.

11. I have heard the learned Counsel for the parties. The petitioner has joined service as JBT teacher in the year 1969. In the service book the date of birth of the petitioner is recorded 2.12.1949. It is the case of the respondents that one Pawan Kumar Sharma lodged a complaint that petitioner has tampered the record, his actual date of birth is 20.12.1948 and not 2.12.1949. On the basis of this complaint, inquiry was got conducted and Assistant Director Elementary Education, Dharamshala had reported that in the admission and withdrawal

register of the school tampering has been done, the date of birth of the petitioner has been changed from 20.12.1948 to 2.12.1949.

12. The petitioner has placed on record his matriculation examination certificate wherein the date of birth is recorded as 2.12.1949. In the service book of the petitioner also the date of birth has been recorded as 2.12.1949. The case of the petitioner is that his date of birth 2.12.1949 recorded in his service book is correct. In the matriculation examination certificate of petitioner his date of birth has been recorded as 2.12.1949. In 2002 (6) ALT 46 (SC) it has been held that date of birth recorded in the matriculation certificate carries a greater evidential value than the certificate issued by a retired Headmaster.

13. In the reply filed in CWP (T) No. 460 of 2008, the respondents have stated that procedure for correction of date of birth of an employee has been prescribed in para 7.1 of the H.P. Financial Rules Vol-I, which can be done within a period of two years from the date of joining of service. There is no allegation of fraud against petitioner for recording his date of birth 2.12.1949 in his service book, nor fraud on the part of petitioner for recording his date of birth 2.12.1949 in his service record has been established. There is no contemporaneous material on record that by playing fraud or misrepresentation the petitioner has allegedly done tampering in the school admission and withdrawal register. In these circumstances there is no reason not to apply the criteria provided in the aforesaid Financial Rules to the Govt. when Govt. intends to change the date of birth of an employee recorded in the service record. In the present case respondents have changed the date of birth of petitioner 2.12.1949 after about 38 years of his entering in the service. At the end of the service career of the petitioner, the date of birth of petitioner was changed by the respondents in his service record from 2.12.1949 to 20.12.1948 which action of the respondents is wrong, illegal and is not sustainable. The petitioner has since retired on 31.12.2007. He is entitled to DCRG.

14. In view of above discussion, both the petitions are partly allowed. It is held that the date of birth of the petitioner is 2.12.1949 as recorded in his matriculation certificate and in his service book. The respondents are directed to pay the DCRG amount of the petitioner to petitioner within a period of one month from the date of supplying a copy of the judgment by the petitioner to the competent authority, failing which the respondents shall pay to petitioner interest at the rate of 9% per annum on such amount till payment. The pending applications, if any, also stand disposed of.