
(2010) 07 AHC CK 0350
In the Allahabad High Court

Surya Nath Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2010) 07 AHC CK 0350

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri Siddharth Khare, learned Counsel for the petitioner and learned Standing Counsel appearing for the respondent Nos. 1 to 5.

2. Through this writ petition, the petitioner has assailed an order passed by Assistant Director of Education, Azamgarh Region, Azamgarh on 12.2.2008 by which the said authority had declined to correct the entry regarding Date of Birth of the petitioner and treated him to have retired from services on 1st January, 2004. He has placed reliance on a transfer certificate issued by Head Master of a Primary School in preference to the duly verified and duly stamped service book prepared at the time of entry in the services and maintained by the Office of Chaudhary Charan Singh Junior High School, Salahabad, Mau. Later on the petitioner was duly confirmed in the services on 28.6.1985 and the approval was also accorded by the B.S.A., Azamgarh vide order dated 16th November, 1985. The service book has been annexed by the petitioner as annexure No. 9 to the writ petition which runs in about 10 pages. This contains all the relevant events which took place in the services career of the petitioner, like, confirmation, awarding increment and allowing promotional scale etc.

3. According to the learned Counsel for the petitioner, the petitioner entered in the services of the institution as a Class-IV employee on 28th June, 1981. The

approval was accorded by Basic Siksha Adhikari, Azamgarh vide order dated 16th November, 1985. The service book of the petitioner was prepared by the Office of the said institution on 28th June 1981 signatures and thumb impression of the petitioner were obtained on the first page of the service book. The signatures and other contents were duly verified by the Principal of Chaudhary Charan Singh Junior High School, Salahabad, Mau. The Date of Birth was recorded as 1st March, 1954 in the service book.

4. As per learned Counsel for the petitioner the service book is prepared by the concerned Department and the details about Government Public Servant are recorded in the service book as per provisions contained in Civil Service Regulations and instructions issued under Fundamental Rules, Financial Handbook Volume II to IV.

5. The grievance had occurred to the petitioner in the year 2007 when an attempt was made to retire the petitioner on the basis of an entry in which incorrect Date of Birth i.e. 1.1.1944 has been recorded. The petitioner has categorically denied this entry. He has brought on record some documents to demolish this transfer certificate on the ground that author of the transfer certificate had denied his signatures on the certificate issued by the institution. The alleged transfer certificate (T.C. No. 15) was not issued by the institution and is not available in the record of the institution.

6. A Writ Petition No. 54318 of 2007 was preferred in this Court, which was disposed of by a judgment and order dated 6.11.2007 directing the Assistant Director of Education (Basic) to dispose of the representation submitted by the petitioner. In furtherance of the said order of this Court the representation has been dismissed by the Assistant Director of Education (Basic), Azamgarh Region, Azamgarh on 12.2.2008 impugned in this writ petition.

7. I have learned Counsel for the petitioner, learned Standing Counsel and perused the materials on record.

8. A perusal of the service book which is duly verified and attested by the Principal, Chaudhary Charan Singh Junior High School, Salahabad, Mau on 28.6.1981 shows that the Date of Birth is 1st March, 1954, which has been recorded in the service book of the petitioner. Thumb impressions and other details of service are available in this service book which has been duly verified and signed by the Head Master of the institution. The existence of the service book has not been doubted by the respondents but much stress has been laid that in the transfer certificate, the Date of Birth has been recorded as 1.1.1944.

9. Learned Counsel for the petitioner has strenuously argued this case highlighting all the points in this writ petition. The learned Counsel for the petitioner has placed reliance upon the case of Mukeshpal Singh v. State of U.P. and Ors. reported 2009 (9) ADJ 839, District Inspector of Schools, Varanasi v. Pradumn Kumar Gaur reported in 2009 (9) ADJ 8 (DB), and in case of Ramapati Rai v. State of U.P. and Ors. in Writ Petition No. 14829 of 2007.

10. Learned Standing Counsel has resisted the motion and has drawn attention of the Court to the various paras of the counter affidavit and documents placed on record. According to him the decision has correctly been taken. The Assistant Director of Education (Basic), Azamgarh Region, Azamgarh had passed a reasoned and speaking order. Reliance has rightly been made on the transfer certificate issued by the institution where petitioner studied.

11. As far as transfer certificate is concerned the author of the certificate Head Master of the institution had himself denied the issuance of such certificate. It has been indicated in the certificate issued by the institution that no such transfer certificate bearing No. 15 was ever issued by the institution and there is no entry of issuance of such transfer certificate in the record of the institution. Thus, now the Court has to place reliance on the unchallenged service book in which the petitioner's Date of Birth has been recorded as 1st March, 1954. The petitioner's case is squarely covered by the judgment cited by Sri Siddharth Khare, learned Counsel for the petitioner.

12. Observations made in *Mukeshpal Singh v. State of U.P. and Ors.* (supra) by this Court are being reproduced below:

6. It is not denied by the learned Standing Counsel that the petitioner had disclosed his date of birth as 16.7.1987 which was in consonance with the High School Certificate which he had passed in the IInd Division, but his selection has been cancelled on the ground that in the transfer certificate of Class VIII his date of birth is mentioned as 7.5.1983.

7. The question is which is the authentic certificate for purposes of service which has to be relied upon. The Governor under Article 309 of the Constitution has framed Date of Birth Determination Niyamawali, 1974 which shows that the date of birth mentioned in the High School certificate would be final. The Apex Court in the case of *U.P. Madhyamik Shiksha Parishad and Others Vs. Raj Kumar Agnihotri*, has also held that the date of birth mentioned in the High School Certificate is the correct date of birth. In an identical matter, a learned Single Judge of this Court in the case of *Jiledar Yadav v. State of U.P. and Ors.* Writ Petition No. 12954 of 2007 decided on 2.4.2008 has also held that the date of birth mentioned either in the school register or in the transfer certificate of any class would be immaterial and the authorities have to look to the date of birth mentioned in the High School certificate. Thus, the entire approach of the respondent is passing of the order dated 13.9.2007 is vitiated.

8. Accordingly, the writ petition succeeds and is allowed and the impugned order dated 13.9.2007 is hereby quashed. The petitioner shall be entitled to be reinstated with consequential benefits.

13. In view of the above discussion, it is clear that the petitioner's date of birth i.e. 1st March, 1954 was recorded in the service book. This is his correct date of birth and this date shall be taken into account for the purpose of his retirement on attaining the age of superannuation. Thus, he shall continue in the services till

28th February, 2014.

14. Accordingly, the writ petition is allowed. The impugned order dated 12.2.2008 is hereby quashed. All the necessary consequences shall follow.