

(2012) 02 UK CK 0044

In the Uttarakhand High Court

Case No : Special Appeal No. 247 of 2011

Uttarakhand Power Corporation Ltd.

APPELLANT

Vs

Bhagwan Singh Rana

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 02 UK CK 0044

Hon'ble Judges : Barin Ghosh, C.J;Umesh Chandra Dhyani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C. J.

1. The respondent-writ petitioner filed a writ petition in this Court on 22nd September, 2010. Subject matter of challenge in the writ petition was two orders. dated 7th October, 2004 and 19th July, 2010. By the order dated 7th October, 2004, it was held out to the respondent-writ petitioner also that in the service record of the respondent-writ petitioner, his date of birth was shown as 9th September, 1951, and that, the same was ascertained on the basis of the medical report, which was pasted on the service record of the respondent-writ petitioner, and that, for all practical purposes, the date of birth of the respondent- writ petitioner shall be reckoned as 9th September, 1951. By the order dated 19th July, 2010, it was held out that the representation of the respondent-writ petitioner dated 16th January, 2010 is not entertainable. In his representation dated 16th January, 2010, the respondent-writ petitioner contended that his date of birth is 2nd March, 1953 and the same is evidenced, amongst others., from many a documents upon which he sought to rely, including school leaving certificate issued prior to his entering into the service. In the said representation, respondent-petitioner also held out that in the seniority list of the employees, as that of the respondent-petitioner, it was shown that the date of birth of the respondent-petitioner is 2nd March, 1953. It was contended that the seniority list made and published, prior to 7th October, 2004 as well as

subsequent to 7th October, 2004, indicates that the date of birth of the respondent-petitioner is 2nd March, 1953.

2. In the circumstances, the question that came for consideration before the writ Court was whether in the service record the date of birth of the respondent-petitioner was entered as 9th September, 1951 and whether the same could, at all, be altered subsequent thereto.

3. Principally, on the ground that when the date of birth was fixed on the basis of medical report, two years. " variation is not unjust and, accordingly, with the pronouncement that the respondent-petitioner should be deemed to have been born on 2nd March, 1953, the writ petition was disposed of.

4. While coming to the said conclusion, as it appears. to us, the learned Judge, who dealt with the writ petition, did not take notice of certain relevant facts including the fact that the respondent-petitioner joined the work charge establishment of the State of Uttar Pradesh on 25th November, 1969, and that, despite receiving the letter dated 7th October, 2004, respondent-petitioner did not question the same for a period of almost six years and, in the meantime, in between 7th October, 2004 and the date of the presentation of the writ petition, service records of the respondent-petitioner were destroyed. In the event the respondent-writ petitioner was born on 2nd March, 1953, he could not enter into a contract of employment on 25th November, 1969, since under the Contract Act, only a major, declared as such by law, is entitled to enter into a contract of employment and by the Majority Act, the age of 18 has been prescribed for a major. Therefore, it must be presumed that for the benefit of the respondent-writ petitioner, the age certified in the medical report was accepted in order to enable the respondent-writ petitioner to join the work charge department of the State. Once the respondent-writ petitioner obtains the said benefit, he could not be given any other benefit which would negate the benefit he has already obtained. However, the most crucial circumstance, which, according to us, was overlooked, is the conduct of the respondent-writ petitioner. He received a letter dated 7th October, 2004 and did not raise any objection in relation thereto. He approached the Court almost six years. after receiving the said letter dated 7th October, 2004. Prior thereto, he made a representation on 16th January, 2010. By that time, almost five years. had passed from the date of the letter dated 7th October, 2004. In the body of the petition, the contents of the letter dated 7th October, 2004 have not been challenged. In other words, in the body of the petition, it has not been contended that in the service book, the date of birth of the respondent-writ petitioner was not recorded as 9th September, 1951 on the basis of a medical report and the said report had been pasted in the service book of the respondent-writ petitioner. It was, however, contended in the body of the petition that in the year 1977, the date of birth of the respondent-petitioner was replaced from 2nd March, 1953 to 9th September, 1951, and that, on 17th August, 1990, he submitted an affidavit indicating that his date of birth is 2nd March, 1953 and accepting the said affidavit on 12 January, 2000, the date of

birth of the respondent-petitioner was replaced from 9th September, 1951 to 2nd March, 1953. It was contended that in such background, it was unjust to hold out by the letter dated 7th October, 2004 that the date of birth of the respondent-petitioner should be reckoned as 9th September, 1951.

5. In the writ petition, therefore, there is an admission that since the year 1977, in the service record of the petitioner, his date of birth had been shown as 9th September, 1951. There is no dispute that the same was on the basis of the medical report. Under the rules, the same could not be altered in 1990. The alteration, which was effected on 12th January, 2000 on the basis of the affidavit affirmed on 17th August, 1990, had and has no sanction of law. The same was pointed out by the letter dated 7th October, 2004. Respondent-petitioner came to Court six years thereafter when the original service book of the respondent-petitioner along with the medical report got destroyed.

6. In the circumstances, as we are advised, the writ petition ought not to have had been entertained on the reasoning that the respondent-petitioner is entitled to two years' benefit, inasmuch as his date of birth was fixed on the basis of medical report. Such benefit is not available to the respondent-petitioner for he has already taken the benefit of the said report, as mentioned above.

7. In order to obtain clinching evidence, we called upon the learned counsel for the appellants to produce before us the declaration given by the respondent-petitioner at the time of enrolling with the General Provident Fund. The learned counsel appearing on behalf of the appellants sought time and was granted time to produce the same. According to him, appropriate searches were made but the records, pertaining to Provident Fund of the respondent-petitioner, are not available since before 1980. We, accordingly, have not been able to compel the learned counsel for the appellants to produce the records, which, according to them, are not available with them.

8. Even without the records of the Provident Fund, for the reasons already indicated above, the one and the only reasonable conclusion would be that the claim of the respondent-writ petitioner to treat him to have been born on 2nd March, 1953 in his service records was not entertainable.

9. We, accordingly, allow the appeal and set aside the judgment and order under appeal.

10. In course of submissions, the learned counsel for the respondent-writ petitioner submitted that honouring the judgment and order under appeal, the respondent-writ petitioner was permitted to work by the appellants. In the circumstances, the respondent-writ petitioner having had worked until today shall be entitled for remuneration for the work done and the same shall not be recovered from him.