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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

RAM NARAYAN — Appellant

Vs.

CONSOLIDATION COMMISSIONER AND OTHERS — Respondent

(Before : Pradeep Kant, J; Narayan Shukla, J)

Decided on : 24-04-2008

A. Service Law Date of Birth Correction Principles Generally, a Government servant's request for date of birth correction at the fag end of their career is rejected if they failed to object within a reasonable time. (Para 3)

B. Service Law Date of Birth Correction Exceptions If the initial date of birth entry in the service book was made without proper basis or in contradiction to certificates supplied by the employee at the time of joining, especially without their involvement or signature, the employee may be allowed to seek correction even if raised later. (Para 3)

C. Service Law Date of Birth Correction Conclusiveness of Service Book Entry An entry in the service book, particularly the date of birth, is not automatically conclusive and cannot override authenticated certificates supplied at the time of joining service, especially when the employee's signature is absent. (Paras 8, 11)

D. Service Law Date of Birth Correction Employer's Burden The employer must demonstrate the basis and material used to record a date of birth in the service book, especially when it differs from the certificates furnished by the employee upon entry into service. (Paras 9, 12)

E. Service Law Date of Birth Correction Case Specificity Each case

regarding date of birth correction must be assessed on its specific facts, and the employee's conduct also plays a role in the exercise of jurisdiction under Article 226 of the Constitution. (Para 4)

Final Result : Allowed

JUDGMENT

Pradeep Kant and Narayan Shukla, JJ.—Heard the learned Counsel for the appellant, Sri Amit Bose and Sri Anuj Kudesia, learned Counsel for the respondents.

This special appeal challenges the order passed by the learned Single Judge dated 14th March, 2008, by means of which the claim of the appellant that his date of birth was incorrectly recorded in the service book because of which he was retired approximately four years before he could actually reach the age of superannuation i.e. 58 years has been rejected.

2. The claim has been rejected mainly on the ground that the appellant did not raise any objection against the entry of date of birth recorded in the service book though it was reflected in the gradation list also, till the end of his career and therefore, he was not entitled to any relief.

3. It is true that a Government servant who enters into service with open eyes and full knowledge that he is to retire at the age of superannuation as may be prescribed for such Government servant, cannot be allowed to adopt any means which would give him further lease of life in his service tenure. Even if, there is a bonafide mistake in recording the date of birth in the service book and the Government servant comes to know about that but if he or she does not take any action within the reasonable time then he may not be allowed to raise this issue at the end of the career, if he has failed to do so promptly. But if a date of birth has been recorded without any basis and material before the department or the appointing authority in the service book and in contradiction to the certificate supplied by the Government servant, that too without any association of the Government servant and without any request being made by him to record such a date the question would arise whether the Government servant is bound by the date of birth recorded in the service book or he would be allowed to get it corrected on the basis of relevant certificate which he had obtained prior to his entering into service and had also supplied the same to the department, while entering into service and failure on his part to move an application for correction immediately his claim rejected merely on the ground that such a prayer has been made at the end of the career when he was issued a notice for retirement.

4. There cannot be a law of rejection to be made applicable in all facts and circumstances of the case which has to be seen on its own facts. The conduct of the Government servant also plays a relevant role while exercising jurisdiction under Article 226 of the Constitution.

5. In the instant case, the admitted case of the parties and as reflected from the finding recorded by the learned Single Judge is that the appellant joined the service as Consolidation Lekhpal in the year 1966. The requisite educational qualification prescribed for the purpose was Junior High School. The appellant submitted his certificate of Junior High School at the time of entering into service in which his date of birth was recorded as 1st January, 1944. The appellant had also passed High School examination thereafter. In that certificate also his date of birth was also recorded as 1.1.1944. However, the appellant did not furnish the High School certificate to the department when he was being appointed or at the time of entering into service but the fact remains that he gave his date of birth as 1.1.1944 and for that purpose he also submitted Junior High School certificate with the same entry.

6. The date of birth recorded in the service book is 7.6.1940. The gradation list of the year 1988 also shows the date of birth as 7.6.1940. It is also admitted and evident from the order of the learned Single Judge that there was no signature of the appellant on the service book though signatures are required to verify the date of birth recorded in the service book.

7. For rejecting the claim of the appellant the learned Single Judge has made the following observation:

It is true that in service book, signature of the petitioner is not there, but in the said service book date of birth of petitioner has been entered as 7.6.1940. In the said service book during his entire continuance in service, all the benefits which have been extended to petitioner, same have been duly entered and same bear endorsement of the concerned authorities. There is no reason to doubt the veracity of the service book, rather there are reasons to believe the contents of service book as even the minutest entries in the said service book in respect of petitioner from the date he entered into service are there, and the date of birth of petitioner has been entered as 7.6.1940, and same is not to be read in isolation. Said date of birth is fortified from the gradation list of the year 1988 and therein name of petitioner finds place at serial No. 2371, and petitioner's qualification has also been mentioned as Junior High School and date of birth which has been mentioned, is 7.6.1940. Thus, it is apparent that as far as High School certificate is concerned, same was never produced before the department at the time when petitioner entered into employment.

8. The service book admittedly did not have the signatures of the appellant. The State has failed to explain that why the signatures of the appellant could not have been taken on the service book when it related to him and he was supposed to be informed of the entry and particularly the date of birth. Merely because the date of birth was recorded as 7th June, 1940 and that was mentioned in one of the gradation list of 1988, it could not be presumed that the date of birth was correctly recorded or it was a genuine date of birth as given by the appellant.

9. The very fact that the qualification of Junior High School was also mentioned in the

same gradation list and the appellant has submitted the Junior High School certificate which was available in the record which gave the date of birth as 1.1.1944, it was incumbent upon the Court to see the basis and material, on which a different entry has been made in the gradation list or even in the service book. If the entry in the service book was made without any basis and without considering any material on record, only on mere guess work of the person making the entry that would not be sufficient to dislodge the claim of the appellant when he says that the date of birth has not been recorded in accordance with the certificate supplied by him.

10. It is not the case of the State that the appellant has given some other date of birth as against the date of birth recorded in the certificate of Junior High School at the time of entry into service not it is a case that at the time of entering into service the Government servant had not supplied the Junior High School certificate. There would hardly be any occasion for the Government servant to supply some other date of birth as against the certificate issued for the purpose, namely, Junior High School or High School.

11. Authenticity to the entry made in the service book cannot be stretched to that extent which negates or belies the relevant entry made in the certificate, which the Government servant supplies at the time of entering into service, and which has not been doubted by any means. May be that High School certificate was not produced by appellant, probably because at the time of entry into service the minimum educational qualification was Junior High School, and therefore, the submitted Junior High School certificate but even then the record shows that Junior High School certificate bears the date of birth of the appellant as of the year 1944 and the same was endorsed in the certificate of High School also. It would thus hardly make any difference if the High School certificate was not produced by the appellant.

12. The learned Counsel for the State has failed to satisfy the Court as to why the entry which was not made in accordance with the Junior High School certificate, duly supplied at the time of entry into service and has also not been able to produce any material on the basis of which a different date of birth was being recorded. We are of the view that there was no material with the appointing authority to make an entry other than the entry given in the Junior High School certificate, at the time of entry into service. The date of birth if had been correctly recorded i.e. 1.6.1944 the appellant would have retired sometimes in the year 2002 on attaining the age of superannuation, therefore, the notice of retirement is per se illegal and is hereby quashed.

13. We are informed that the appellant has already attained the age of 60 years as per his date of birth as recorded in the Junior High School certificate, therefore, we direct that he would be deemed to have been in service till he reached the age of 60 years, by counting his date of birth as 1.1.1944 and he would be entitled for all consequential benefits and pensionary benefits. His pension may be recalculated and re-fixed. This shall be done within a period of three months from the date of receipt of the certified copy of the order.

14. The special appeal is allowed. The order passed by the learned Single Judge dated 14.3.2008 is hereby set aside, as a consequence thereof the writ petition is allowed.