

Vishambar Singh Vs. Co-operative Cane Development Union Ltd. and Another

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Court : Allahabad

Decided On : Feb-18-1999

Reported in : 1999(2)AWC1229; (1999)3UPLBEC1892

Judge : N.K. Mitra, C.J. and ;D.K. Seth

Acts : [Constitution of India](#) - Article 226;

Appeal No. : Special Appeal No. 132 of 1999

Appellant : Vishambar Singh

Respondent : Co-operative Cane Development Union Ltd. and Another

Advocate for Def. : P.M.N. Singh and Additional Adv. General.

Advocate for Pet/Ap. : Atul Mehri, Adv.

Judgement :

N.K. Mitra, C.J and D.K. Seth, J.

1. The appellant had been served with an order that on attaining the age of 58 years, he would retire from service on 31st January, 1999 as his date of birth has been recorded in the service record as 20th January. 1941 at the lime of his entry in service. The appellant claims that he had appeared in High School

Examinations conducted by Hindi Sahitya Sammclan, Allahabad in the year, 1990 wherein his date of birth has been recorded as 20th January. 1943 in the certificate issued pursuant to such examinations. On the basis of this subsequent certificate, after entry into the service, the appellant claims that he should be made to retire only on the basis of the date of birth recorded in the certificate.

2. Sri Atul Mehri, learned counsel for the appellant contends that according to the rules, the date of birth recorded in the High School Certificate should be the correct date of birth for the purpose of calculating the date of retirement. He relied on a decision in the case of Jhandeshwar Prasad Dwivedi v. Chief Engineer P.W.D., U. P. Lucknow and others, AIR 1977 All 174, in support of his contention. Sri P. M. N. Singh, learned Additional Advocate General, on the other hand, contended that the appellant had obtained the High School Certificate after entry into service. Once he had declared his date of birth as 20th January. 1941 at the time of entry into service, the same shall be treated to be his correct date of birth as has been held in the case of Adhishasi Abhiyanla Electricity Rihand and Hydel Civil Division. UPSEB. Allahabad and others v. Shitala Prasad and another, 1993 HVD(All) Vol. IV 325.

3. We have heard both the learned counsel for the parties at length. In the facts and circumstances of the present case, admittedly, the date of birth of the appellant has been recorded in his service book as 20th January'. 1941 and he passed the High School Examinations held in 1990 in which the date of birth has been recorded as 20th January. 1943. He allowed the date of birth entered in his service book to remain unaltered till the writ petition was filed at the fag end of his career when he was served with an order that he was due to retire on 31st January. 1999. The High School certificate should be considered to be the correct proof of date of birth when it is produced at the lime of entry into the service. The date of birth mentioned in the High School certificate, which is subsequent to the entry into service and different from the date of birth declared by the appellant and entered in the service book, cannot be taken to be proper proof of date of birth in terms of the relevant rules. It was so held in the case of Adhishast Abhtyanta Electricity Rihand and Hydel Civil Division U. P. S. E. B.. Allahabad and others v. Shitala Prasad and another (supra), that if an employee has passed High School

examinations after joining the service the date of birth as recorded in his service book at the time of his entry into the Government service shall be treated to be his correct date of birth. We are in respectful agreement with the view taken in the said decision. The facts in the case of Jhandeshwar Prasad Dwivedi (supra) are distinguishable, inasmuch as there the question was with regard to the power of the Board to correct the date of birth recorded in the High School certificate. Here there is no question of correction of the date of birth in the High School certificate. Therefore, the principles laid down in that case cannot be attracted in the facts and Circumstances of this case.

4. In the case of Burn Standard and Company v. Dinabandhu Mazumdar. JT 1995 (4) SC 23, the Apex Court had held that writ petition for correction of age at the fag end of the career cannot be entertained. Here also the writ petition for correcting the age has since been moved only on the eve of retirement.

5. Thus, there is no merit in this appeal. Therefore, the appeal fails and is accordingly dismissed. However, there will be no order as to cost.