

Pitamber Dutt Semwal Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-15-1999

Reported in : 2000(2)AWC1531; (2000)2UPLBEC1101

Judge : Ravi S. Dhavan and ;Aloke Chakrabarti, JJ.

Acts : Uttar Pradesh Recruitment of Service (Determination of Date of Birth) Rules, 1974 - Rule 2

Appeal No. : Special Appeal No. 562 of 1996

Appellant : Pitamber Dutt Semwal

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.S. Negi, Adv.

Judgement :

Ravi S. Dhavan and Aloke Chakrabarti, JJ.

1. This matter relates to a correction sought by the petitioner appellant, Pitamber Dutt Semwal in his service record, which if done, would permit recording of a change in his date of birth and give additional years in the service. The only question, which needs to be examined, is whether the contention of the petitioner

appellant is bona fide as from the record. The Court has perused the order dated 1.5.1996 passed on the writ petition. i.e., the Writ Petition No. 15319 of 1996. Pitamber Dutt Semwal a. State of U. P. and Others. The view of the learned Judge in the order, which has been challenged, is that U. P. Recruitment of Service (Determination of Date of Birth) Rules, 1974, in context, are in emphatic language and even an application or representation permitting correction of the date of birth does not lie and is not legally maintainable. There are two aspects of the matter. One is, when there is apparent injustice and the record indeed may have been recorded incorrectly, would a request to rectify the record be maintainable? The other is whether there is any impediment in the rule so as to make it so rigid that no application is maintainable at all regardless of the bona fides of the request that the service record is in error?

2. The relevant rule is Rule 2. The parameters of recording the date of birth as prescribed are :

'2. Determination of correct date of birth or age.--The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion. superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.'

3. In so far as the petitioner appellant, Pitamber Dutt Semwal is concerned, he had not passed the High School Examination. In his case, it is contended the alternative was that his age, could only be on a presumption that it was as recorded at the time when he entered service. But, if the circumstances reveal that was not correctly recorded, the presumption is rebuttable. On facts, it is explained that the matter was enquired into by the Officer Incharge. District Office, Uttar

Kashi. The enquiry revealed that the date, as had been recorded In the service book, had been made subsequent to other entries In the service book and there Is no supporting evidence that the entry was recorded when he entered service. In the circumstances, the Officer Incharge examined the School Leaving Certificate, which was signed by the Principal. Government Sanskrit Vidyalaya. Uttar Kashi. The Principal of the institution appeared before the Officer Incharge, District Office with the original record. The original record was examined by the Officer Incharge, District Office. Uttar Kashi. With regard to date of birth of the employee along with other records of the institution, in this context, it was found that the date of birth as was recorded, is 6th July, 1942. It was recorded in the register of 1955, the year when the petitioner appellant entered service. This date of birth has been certified by the Assistant Inspector Sanskrit Pathshala, Bareilly. The Officer Incharge. District Office, Uttar Kashi found that the documents are genuine and beyond doubt. The Officer Incharge. District Office, Uttar Kashi also verified as abundant caution that at the time when this record lay at the institution. Pitamber Dutt Semwal was also present in School during the months July to October, 1955.

4. The Officer Incharge, District Office, Uttar Kashi, who was to decide the representation, so presented by the petitioner appellant Pitamber Dutt Semwal, came to the correct conclusion after noticing the facts on record. Thereafter, he expressed his helplessness in permitting the correction of the date of birth on an understanding that no application or representation would be entertained for correction in any circumstances whatsoever, under the Rules.

5. The interpretation, as was drawn by the Officer Incharge, District Office, Uttar Kashi. perhaps.has arisen on a misreading of the relevant rule and in the Interpretation of it. When a rule asserts that a certain state of affairs stood and were recorded, then, it shall be deemed and assumed to be correct. This process of presumption is based on the analysis that if there be a High School Certificate so presented at the time of entry into service, then, the date of birth recorded in it could be presumed as the correct date. But if such a certificate, i.e.. High School or School Leaving is not available as an incumbent has not read at this level, then, the presumption is not available to be drawn.

6. Recording a date of birth or making an entry into the service book much after an incumbent entered service itself raises a presumption of doubt. In so far as present case is concerned, this Court need not notice any other aspect on facts as the Officer Incharge, District Office, Uttar Kashi. has come to the conclusion that the date of birth of petitioner appellant. Pltamber Dutt Semwal has been Incorrectly recorded in the service book much after the incumbent entered service. In the circumstances, the Court finds that the learned Judge, when he took to strict a view in not permitting a writ of certiorari to operate for correction of the service record, was in error.

7. The Rule is interpreted In light of the circumstances indicated by this Court. The Officer Incharge. District Office. Uttar Kashi has arrived at a correct conclusion on the basis of facts on record that the date of birth has been entered not at the time of entering service but later and that also incorrectly. In the circumstances, this Court needs to observe that the rule does permit correction of the change of date given, the facts and circumstances of each case.

8. The communication of the Treasury Officer dated 30.1.1996/ 31.1.1996 and 16.4.1996. Annexures-2 and 4 to the writ petition are quashed. The date of retirement of the petitioner appellant will be as found by the Officer Incharge, District Office, Uttar Kashi in his report dated April 15, 1996, Annexure-3 to the writ petition, that is to say, July 6. 1942 and a certiorari issues to correct the record accordingly.

9. Appeal is allowed with costs throughout.