

Ram Kewal Vs. U.P. State Electricity Board and anr.

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Court : Allahabad

Decided On : Nov-01-2002

Reported in : 2003(1)AWC392; (2003)1UPLBEC142

Judge : S.N. Srivastava, J.

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

Appeal No. : C.M.W.P. No. 47535 of 2002

Appellant : Ram Kewal

Respondent : U.P. State Electricity Board and anr.

Advocate for Def. : N. Misra, Adv.

Advocate for Pet/Ap. : D.V. Singh, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Srivastava, J.

1. By means of the present petition, the petitioner has sought the relief of a writ of mandamus directing the respondents not to retire the petitioner from the service on 1.1.2003.

2. The petitioner holds a class 4 post having been appointed as Coolie in the year 1984 Electricity Distribution Division, Khalilabad district Sant Kabir Nagar and subsequently he was granted preferment/promotion and designated as Fuse-man in the year 1988. The promotion entailed completion of the service record and consequently, the petitioner was referred for medical examination for ascertainment of his age. On the basis of medical report dated 13.1.1988 pursuant to the medical examination to ascertain his age, the date of the birth was accordingly recorded in the service book and by that reckoning he was recorded in the service book to retire on 1.1.2003. According to the own allegations in the writ petition, the date of birth came to be recorded on the basis of medical report dated 13.1.1988. It appears that on the basis of entry made in the service book, a notice preparatory to his retirement was issued indicating therein his date of retirement as 1.1.2003 and as a result, the petitioner preferred representation on 29.8.2002 disputing therein his date of retirement and calling in aid the kutumb register in which the petitioner is shown to have been born on 1,1.1947. Copy of kutumb register filed along with this petition bears no date and thus, it is difficult to ascertain as to on which date it was issued.

3. The learned counsel for the petitioner submits that the petitioner being a class 4 employee was not literate enough in order to have sophistication of a literate and educated person and that at the time of entry into the service he had indicated his date of birth as disclosed in the kutumb register but subsequently at the time of his promotion as fuse-man he was referred for medical examination and the Chief Medical Officer physiognomically indicated his age in the report without subjecting him to proper medical examination.

4. It is conceded that the entry in the service book came to be recorded pursuant to the medical examination in the year 1988 and at the fag end of retirement, consequent upon notice of retirement, the petitioner made the representation dated 29.8.2002 to modify his date of birth. It is settled position of law that application to modify/change/alter the date of birth at the fag end of retirement cannot be sustained. Having remained a mute spectator since the year 1988, the petitioner cannot wriggle out of the patina of laches, undue delay and acquiescence. In *Burn Standard Co. Ltd. v. Sri Dinabandhu Majumdar*, JT 1995

(4) SC 23, the Apex Court posed a question to itself to the effect. 'If an employee of the Government or its instrumentality who is at the fag end of his service and due for retirement from his service shortly, according to his date of birth found in his 'service and leave record' files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for the High Court to entertain such application to enquire into disputed facts pertaining to his date of birth for correcting it and extend his period of service?' in reply to this question, the Apex Court observed as under :

'Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion, of his Juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his service record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary Jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'service and leave

record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court.'

In the ultimate analysis, the Apex Court held as under :

'Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of Its discretionary writ Jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'service and leave record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.'

5. The learned counsel for the petitioner has not drawn attention of the Court to any provision under which such application could sustain or is maintainable particularly at the fag end of retirement. On a parity of reasoning adopted by the Supreme Court in the above case, the arguments advanced by the learned counsel do not commend to me for acceptance. No other submissions were pressed into service.

6. As a result of foregoing discussion, the petition fails and is accordingly dismissed in limine.

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