

Ramesh Purohit Vs. State of Raj. and Ors

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Court : Rajasthan Jodhpur

Decided On : Jul-31-2015

Appellant : Ramesh Purohit

Respondent : State of Raj. and Ors

Advocate for Pet/Ap. : Shri. Rajat Arora

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CIVIL WRIT PETITION NO.14093/2013 Ramesh Purohit versus The State of Rajasthan & ORS.Date of order : 31.7.2015 HON'BLE Mr.JUSTICE SANDEEP MEHTA Mr.Rajat Arora, for the petitioner.

Ms.Shweta Bora for Mr.Anil Bissa, AGC, for the respondents.

<><><> By way of the instant writ petition, the petitioner has approached this Court assailing the legality and validity of the memorandum of charges and charge-sheet (Annex.16) dated 29.10.2013 whereby disciplinary proceedings were initiated under Rule 16 of the CCA Rules, 1958 against the petitioner and to direct the respondents to forthwith release the pensionary and retiral benefits of the petitioner.

Facts in brief are that, after summoning the name of the petitioner and numerous other persons from the Employment Exchange Ajmer, an appointment order (Annex.4) dated 29.6.1979 was issued by the respondent Medical and Health 2 Department offering appointment to the aspirants on the post of Male NuRs.in pay scale No.2 on temporary basis.

Whilst issuing the appointment order, the petitioners date of birth was mentioned therein as 17.10.1953.

The same date of birth was entered in the petitioners service book as well.

It appears that the date of birth so entered in the petitioners service record was erroneous as his actual date of birth is 17.9.1953.

A complaint dated 2.12.2007 was received in the office of the Additional Director, Medical and Health Services, Government of Rajasthan, Jaipur regarding some of the abovementioned employees having procured employment by submitting forged documents.

The petitioners name also featured therein.

The complaint has been placed on record of the writ petition as Annex.5.

The Joint Director directed an inquiry upon the complaint and the inquiry officer being the Assistant Accounts Officer submitted an inquiry report (Annex.6) finding that the allegations levelled in the complaint were incorrect and the recruitment of the petitioner and other persons named in the complaint was absolutely fair and untainted.

During the inquiry, the petitioners original 3 educational documents/certificates etc.were also got verified from the Board and as per the said documents, the date of birth of the petitioner was found as 17.9.1953 instead of 17.10.1953 as entered in his service record.

The inquiry was finally dropped by order (Annex.8) dated 28.6.2011.

The concluding portion of the inquiry report is reproduced hereinbelow for the sake of ready reference:- , , .. / / .30/08/635 26-2-08 , , 0 0 .

An FIR No.31/2008 was also registered at the Police Station Hathipol, Udaipur by one Satyaveer Singh in relation to the very same allegations, wherein also, after investigation the Police filed a negative Final Report in the court concerned on 5.7.2008.

It was clearly mentioned in the Final Report that none of the accused employees had procured employment by submitting forged documents.

It appears that despite all the inquiries and the disclosure that the petitioners date of birth was 17.9.1953 4 (as against 17.10.1953 entered in his service book).no endeavour was made either by the petitioner or the authorities to rectify the same.

Thereafter, an order Annex.11 dated 30.1.2013 came to be passed whereby, acting on the erroneous date of birth entry in the petitioners service book, it was directed to retire him in reference to the unrectified date of birth 17.10.1953 and his retirement date was fixed as 31.10.2013.

Yet another complaint came to be filed by Sh.Satyaveer Singh Tanwar, the same person, who had earlier filed the complaint against the petitioner and had also filed the FIR referred to supra (wherein the Police gave a Final Report).It was stated in the complaint that cuttings and overwriting had been made in the petitioners service book and his date of birth had been altered to 17.10.1953 whereas the petitioners actual date of birth was 17.9.1953 as per his educational documents.

Upon receiving the said complaint, the petitioner was placed under suspension by order (Annex.14) dated 29.10.2013.

He was thereafter retired from service on 31.10.2013 upon attaining the age of superannuation in reference to the date of birth as entered in 5 his service record.

The day before the petitioners retirement (on the basis of the erroneous date of birth entry).the petitioner was served a charge-sheet (Annex.16) dated 29.10.2013 with the allegations that he procured government job by making false assertions

regarding his date of birth.

The memorandum of charge proposed against the petitioner reads as below: , , -1, , , 27.11.2012 17.10.1953 / -1/ / -1/2013/78 30.1.2013 , -1, , 31.10.2013 , , 0 1970 0 102190 , , 0 1970 0 102190 17.9.1953 6 17.10.1953 , () . , 0 () 0 0 28.10.2013 , , -1 17.9.1953 , , , -1, 17.9.1953 , , () 0 0 28.10.2013 .

The petitioner has now approached this Court by way of the instant writ petition praying for quashing of the aforesaid charge-sheet and also for directing the respondents to release his retiral benefits, which are reportedly withheld in pursuance of the above charge-sheet.

Shri Rajat Arora, learned counsel for the petitioner contended that the charge-sheet issued to the petitioner in the final phase of his service career just two days before his 7 retirement is malafide, perverse and unjust.

He contended that, from a bare perusal of the appointment order (Annex.4).it is reflected that the petitioner had been appointed as a Male NuRs.in the respondent department alongwith 46 other persons by summoning their names from the Employment Exchanges Ajmer, Jaipur, Bikaner and Jodhpur.

Thus the petitioner had no part to play in issuance of the appointment order, which was done in a routine manner after getting the names from the Employment Exchange.

No information was supplied by the petitioner regarding his date of birth at that point of time, which was inadvertently entered as 17.10.1953 in the appointment order as well as in his service book.

An inquiry was instituted with the same allegations wherein the petitioners educational documents were verified reflecting that his date of birth was 17.9.1953 but inadvertently and owing to the wrong date of birth mentioned in the appointment order, the petitioners date of birth continued in the service book as 17.10.1953.

Learned counsel submitted that Satyaveer Singh bears an ill will against the petitioner and he filed an earlier complaint with the very same allegations 8 that the petitioner had procured the job by forged documents.

The said complaint was thoroughly inquired into and was filed with the positive conclusion that the petitioner had not procured employment by committing fraud or forgery.

Satyaveer Singh also filed the FIR No.31 against the petitioner at the Police Station Hathipol wherein also, the Police, after detailed investigation filed a negative Final Report.

The petitioners educational documents attached with his service record were got verified from the concerned institution and were found to be genuine and untampered.

In this background, learned counsel submitted that the error regarding the entry of date of birth in the petitioners service book was bonafide.

He contended that the officers concerned had long back came to know of the error of one month in the date of birth entered in the petitioners service record and as such, it was incumbent upon them to have rectified the date of birth entry immediately thereafter.

He contended that having put in almost 24 years of service, the petitioner would not gain anything significant by continuing in service for an insignificant extra period of one month.

He thus submitted 9 that the impugned charge-sheet is malafide and unjust and deserves to be quashed.

Per contra, Ms.Shweta Bora, learned counsel representing the respondent Medical Department vehemently opposed the submissions advanced by the learned counsel for the petitioner.

She contended that the petitioner was under a lawful obligation to move the authorities for effecting rectification in his date of birth which was wrongly entered

in his service record.

Having failed to do so, the petitioner continued to work on the post of Male NuRs. for one extra month beyond his actual superannuation date and earned wrongful salary etc. without entitlement.

Thus, she contended that the charge-sheet issued to the petitioner is absolutely justified and does not call for any interference by this Court while exercising its extraordinary writ jurisdiction.

However, the learned counsel candidly conceded that the departmental authorities were also well aware of the apparent error in the entry of date of birth in the petitioners service book but they also did not initiate any steps to rectify the same.

However, the learned counsel admitted, that in the earlier preliminary 10 inquiry, the inquiry officer exonerated the petitioner of the very same allegations.

I have heard the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

The charge-sheet in question was served to the petitioner just two days before his superannuation.

The facts narrated above clearly reflect that the inaction in seeking rectification in date of birth in the service record can be attributed to inadvertence or negligence at best.

No mensrea can be attached to this inaction.

Admittedly, by the so-called wrong date of birth entry, the petitioner at best continued in service for a period of one month beyond his actual entitlement to serve.

Thus, nothing significant was to be gained by the petitioner even if he was acting deliberately.

It is an admitted position on record that appointment was offered to the petitioner & 46 other persons after summoning their names from the Employment Exchange, therefore, there was no question of the petitioner supplying any wrong information to the department for procuring the job.

Even the 11 charge, which has been proposed against the petitioner reads that the petitioner did not make any endeavour to get rectified the incorrect date of entry in his service record.

It is undisputed by the respondents that the very same allegations, which are proposed in the impugned charge-sheet were also inquired into earlier and a report (Annex.8) dated 28.6.2011 exonerating the petitioner was submitted by the Joint Director.

In the opinion of this Court, no sooner the authorities became aware of the apparent error in the petitioners date of birth entries in his service record, it was incumbent upon the concerned officer to direct appropriate rectification therein.

Therefore, if the petitioner is responsible for failing to make a request for rectification of date of birth entry in the service book, then the departmental officials, who conducted the earlier inquiries in relation to the very same allegations long before the charge-sheet in question was issued are equally responsible.

Be that as it may, even accepting the allegations set out in the proposed charge-sheet to be true at best, it is a case of negligence/inadvertence and nothing beyond that.

Looking to 12 the fact that the petitioner should actually have been retired on 30.9.2013 and instead was retired on 31.10.2013, in the opinion of this Court, at best, the respondents could have withheld the petitioners salary for the month of October 2013 and nothing beyond that.

This exercise is even possible now.

In any event, it is the Courts firm view that there was no justification whatsoever to direct initiation of a departmental inquiry under Rule 16 of the CCA Rules against the petitioner at that belated stage and that too for charges which had already been inquired into long back and the inquiry reports of the departmental officials as well as Police had resulted in the petitioners favour.

There is another technical snag in the inquiry instituted against the petitioner.

Going by the departments case, the petitioner is required to be treated superannuated from 30.9.2013 onwards.

Thus, as on the date of institution of the disciplinary proceedings, the petitioner was no longer in the service of the Government.

At that stage, no inquiry could be instituted against him without the Governors sanction as per Rule 7 of the CCA Rules.

As a consequence of the above discussion, the writ 13 petition deserves to be and is hereby allowed.

The proposed charge-sheet issued to the petitioner is hereby declared illegal and quashed.

As a consequence, the respondents are directed to release the petitioners retiral benefits forthwith after applying appropriate interest thereupon in terms of the Rules.

No order as to costs.

(SANDEEP MEHTA).J.

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