

Abdul Rashid Reshi Vs. State and ors.

Abdul Rashid Reshi Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/900658

Court : Jammu and Kashmir

Decided On : May-20-2003

Reported in : 2003(3)JKJ149

Judge : Permod Kohli, J.

Acts : Jammu and Kashmir Financial Code - Rule 6.4

Appeal No. : SWP No. 2200/1999

Appellant : Abdul Rashid Reshi

Respondent : State and ors.

Advocate for Def. : M.A. Beigh, Dy. Adv. General

Advocate for Pet/Ap. : Zahoor A. Shah, Adv.

Disposition : Petition allowed

Judgement :

Permod Kohli, J.

1. Petitioner has challenged order dated 1.11.1999, whereby he was ordered to be retired from Government service as driver with effect from 31.1.2000 and has sought relief of his continuance in the service till 2003.

2. The brief facts as indicated in the writ petition are that the petitioner was appointed as driver by the Director Health Services, Kashmir, vide his order dated 17.3.1956 against a substantive post of driver. At the time of preparation of his service book, the Drawing and Disbursing Officer wrongly recorded his date of birth as 3.1.1942. When the petitioner came to know of this, he immediately disputed the entry and produced the necessary school leaving certificate and the authorities after conducting an enquiry and verification of the record and other material, corrected the said date of birth from 3.1.1942 to 7.5.1945. The original entry of date of birth was deleted after making corrections. After 13 years of service rendered in the Health Department, petitioner came to be transferred to Medical College, Srinagar, vide order dated 15.11.1979 and entry to this effect has also been recorded in his service book. Petitioner claim that on the basis of his date of birth as duly and properly recorded in his service book, he has to retire on 31st May, 2003. He was, however, sought to be retired earlier than his date of superannuation on the basis of the previous entry of his date of birth i.e. 3rd January 1942, which stands deleted and corrected with the new date of birth recorded in the service record.

3. Objections have been filed by the respondents wherein it is pleaded that the date of birth once recorded in the service book of the petitioner cannot be altered at the fag end of the service career. Petitioner filed a representation in 1998 for correction of his date of birth. It is stated that if the petitioner's grievance was genuine, he should have filed a representation within six months after the issuance of SRO 310 of 1995 and avail the opportunity for correction of his date of birth under law. In para 4 of the objections, respondents have stated that the original date of birth was recorded as 3.1.1942 in the service book of the petitioner which was ascertained from the medical certificate.

4. However, said date of birth has been recorded afresh as 7th May, 1945. From the entry in the service book, said date of birth has been changed on the basis of some certificate issued by Headmaster Islamia School, Srinagar. Reliance is placed on Rule 6.4 of the Jammu and Kashmir Financial Code Vol. 1, where under a date of birth once recorded cannot be altered except in case of a clerical error with the previous orders of the Government. It is further stated that some Family

Planning Officer changed the date of birth of the petitioner without recording any reasons or referring the matter to the competent authority i.e. the Government. There does not appear any clerical error in recording the date of birth as 3.1.1942, on the basis of medical certificate and, therefore, the change effected is not permissible. The representation of the petitioner for change of date of birth from 3.1.1942 to 7.5.1945 was duly considered and petitioner was informed that his request has not been accepted as he did not file any representation within six months from the date of issuance of SRO 310 of 1995. It is also stated that the petitioner has retired on 31.1.2000 on the basis of his original date of birth i.e. 3.1.1942.

5. During the pendency of this petition and while considering the application for grant of interim relief, this court vide detailed order dated 21.9.2000 passed the following direction:

'.....As such, it is ordered that in case the writ petitioner is ultimately allowed, all benefits including those of monetary benefits would be allowed to him. With these directions, prayer for interim relief is declined.'

6. The record of the case namely service book has been produced by the respondents pursuant to a directions of this court.

7. I have heard learned counsel for the parties and examined the record.

The entire case of the petitioner is based upon the entries made in the service book. Against column No. 5 which relate to the date of birth, following entry was made:

'3.1.1942 (Third January One thousand nine hundred and forty two) ascertained from medical certificate.'

8. It appears that this entry was scored off and following entry was incorporated:

'7.5.1945 (Seventh May, Nineteen hundred and forty five) as per certificate issued from Headmaster Islamia Middle School, Srinagar.'

The said entry is signed by some officer under the stamp 'District Family Planning Officer, Srinagar dated 17/1, with the following endorsement:

'Verified from the original certificate of Headmaster Islamia School, Srinagar.'

9. On the second page of the service book which contained the aforesaid entries, there is a certificate pasted, attested by Unit Officer, N.M.E.P. Kashmir Valley, Srinagar. The certificate is issued from the office of Islamia Middle School, Safakadal, Srinagar. Same is reproduced hereunder:

'Certified that Abdul Rashid S/O Ghulam Rasool resident of Mohalla Palayarbal, Srinagar has been admitted in this school on 6.5.1950 under No. 2497. His date of birth according to the admission record of this school is 7.5.1945 (Seven May, Nineteen hundred and forty five).'

10. The officer who has attested the aforesaid certificate has also signed below the entry of date of birth on the service book, wherein the date 13.5.1967 has been recorded as the date when the said officer appears to have signed. He appears to be an officer from the Health Department as his signatures appear on the subsequent entries also.

11. The moot question that arises for consideration is as to whether impugned order retiring the petitioner on the basis of his original date of birth i.e. 3.1.1942 is legal or not.

12. From the service book it is apparent that the original date of birth of the petitioner was recorded as 3.1.1942. It is also not disputed by the parties that the said date of birth was corrected and an entry with changed date of birth i.e. 7.5.1945 has been made in the service book. This fresh entry was made after scoring off the original entry. The second entry has been signed by the District Family Planning Officer, Srinagar, with the endorsement that 'verified from the original certificate of Headmaster Islamia School, Srinagar'. As a matter of fact, a copy of the said certificate duly attested by Unit Officer, NMEP, Kashmir Valley Unit, Srinagar is also pasted on the service book. In this certificate issued from Islamia Middle School, Safakadal, the date of birth of the petitioner has been

recorded as 7.5.1945. Existence of this entry has not been disputed by the respondents. In presence of this entry, which is duly signed by the officer of the time some where in the year 1967, how and on what basis the petitioner was sought to be retired on the basis of date of birth as 3.1.1942 has not been shown or disclosed. The order impugned in the writ petition issued by Principal/Dean, Government Medical College, Srinagar, only mention the date of birth of the petitioner and date of his proposed retirement. How the authorities ordered retirement of the petitioner on the basis of date of birth which has been scored off and corrected is not know.

13. Assuming that the authorities were not satisfied with the correction of the date of birth in the service record of the petitioner, only course available to them was to have issued a notice to the petitioner and after seeking his explanation and holding an enquiry in respect to the entry of date of birth in the service record, appropriate orders should have been passed. Respondents instead of holding and enquiry and determining the exact date of birth of the petitioner ordered retirement of the petitioner contrary to his service record.

14. The plea of the respondents that the petitioner made a representation in the year 1998 for correction of his date of birth and that he did not apply within six months from the issuance of the SRO 310 of 1995 is not relevant under the facts and circumstances of the present case. It is not the petitioner who sought change of his date of birth in the service record and, therefore, he was not required to make any such representation. Hence the question of his representation being beyond the period prescribed under SRO 310 of 1995 does not arise.

15. From the examination of the service book, it cannot be doubted that the original entry of date of birth was changed and has been rectified as per original certificate. The said entry has been duly authenticated by some officer of the department on the basis of a school certificate which is also on record and duly attested by the officer of the time. It is not the case of the respondents that the petitioner is responsible for tampering with the record. There is no allegation of tampering of record attributable to the petitioner or for that matter to any other person.

16. Therefore, the existence of entry of date of birth as 7.5.1945 in the service book cannot be disputed. If this being the situation, then it was not open to the respondents to have taken into account the entry of date of birth originally recorded and scored off later. If the authorities were of the opinion that the petitioner's date of birth has not been correctly recorded, they were under an obligation to have held an enquiry in this regard and verified the facts that too by associating the petitioner with such an enquiry and affording him an opportunity of being heard. Nothing has been done and the petitioner retired apparently before he reached the age of superannuation. Petitioner's right of being heard has been denied to him and his right to continue in service till he reached the age of superannuation has been taken away in gross violation of principles of natural. The order impugned is thus not sustainable in law. Same is hereby ordered to be quashed.

17. As a consequence of quashment of the impugned order, petitioner shall be deemed to be in service till ending May, 2003. The petitioner is entitled to all service benefits i.e. salary, allowances, gratuity and all other retiral benefits of his service as if he has retired on 31st May 2003. This is also in view of the interim orders dated 21.9.2000 passed by this court while disposing of the application for grant of interim relief. This court also observed that if the petitioner ultimately succeeds, he may be compensated in terms of money, The action of respondents has caused harassment and agony to the petitioner. Though the same cannot be measured in terms of money, but I direct that a sum of Rs. 50,000 be paid to the petitioner as compensation for his wrongful retirement from service. The petitioner is also entitled to costs which are assessed at Rs. 2000.

18. This petition is accordingly allowed with the aforesaid directions.