

**Jai Narayan Vs. State of Raj. and ors**

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**Court :** Rajasthan Jodhpur

**Decided On :** Dec-19-2012

**Appellant :** Jai Narayan

**Respondent :** State of Raj. and ors

**Judgement :**

(1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ORDER S.B. CIVIL WRIT PETITION NO.4817/2010 Jai Narayan Versus State of Rajasthan & Ors. Date of Order :

19. 12.2012 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR Mr. C.S. Bissa for the petitioner Mr. Vimal Mathur for the respondents BY THE COURT : The petitioner entered in the services of the respondents being appointed as Gangman under an order dated 01.03.1970. At the time of initial appointment, his date of birth recorded was 05.05.1950. A promotion thereafter was accorded to the petitioner as Helper with effect from 01.04.1971. By submitting a representation dated 02.07.1973, the petitioner made a request to the competent authority of the respondents to make necessary correction in his service record relating to his date of birth. As per the petitioner, his date of birth was 20.04.1951, but was erroneously recorded as 05.05.1950. After considering the application submitted by the petitioner, necessary correction in the service record (2) was made on 01.09.1982 by recording 20.04.1951 as date of birth of the petitioner. The date of birth aforesaid was maintained in seniority list and all other relevant service records, however, under a communication dated 11.12.2009, the petitioner was

sought to be retired from service with effect from 31.05.2010 by treating his date of birth as 05.05.1950. The petitioner immediately approached to the respondents and pointed out that his recorded date of birth is 20.04.1951, therefore, he cannot be retired from service before 30.04.2011. No heed was given to the issue raised, hence, this petition for writ before this court. Under the order dated 26.05.2010, as an interim measure, effect and operation of the order retiring the petitioner with effect from 31.05.2010 was stayed, however, the respondents were set at liberty to retire the petitioner on attaining the age of superannuation, i.e. of 60 years, by taking into consideration 20.04.1951 as his date of birth. The interim order aforesaid has been complied with by the respondents and the petitioner continued in service upto 30.04.2011. It is submitted by learned counsel for the petitioner that by acting upon a representation submitted by the petitioner, the respondents entered 20.04.1951 as date of (3) birth of the petitioner in his service record on 01.09.1982. The same was maintained in all subsequent official documents, except the order dated 11.12.2009, whereby the petitioner was sought to be retired from service with effect from 31.05.2010. It is asserted that no change in the date of birth of the petitioner could have been made after making necessary correction in the service record by due application of mind. In alternative, it is also submitted that if the respondents had any doubt about correctness of the correction made on 01.09.1982, then too, no change could have been made without giving an opportunity of hearing to the petitioner and without adhering the doctrine of audi alteram partem. A reply to the writ petition has been filed on behalf of the respondents with assertion that the petitioner at the time of his initial appointment in the month of March 1971 entered his date of birth as 05.05.1950. No correction therein could have been made by the competent authority and as such, no cognizance of the correction made on 01.09.1982 was require to be taken, hence, 05.05.1950 being date of birth of the petitioner, he was rightly retired from service with effect from 31.05.2010. Heard learned counsel for the parties. (4) It is not at all in dispute that the date of birth of the petitioner as entered in service record at the time of his initial appointment was corrected by the competent authority on 01.09.1982. The correction aforesaid was made on the basis of the representation submitted by the petitioner. A presumption, thus, is obvious that the entire record and other relevant factors were taken into consideration by the

competent authority while substituting 20.04.1951 as correct date of birth of the petitioner. No change therein could have been made by the respondents without affording an opportunity of hearing to the petitioner. In the instant matter, admittedly the respondents decided to retire the petitioner with effect from 31.05.2010 without making any corresponding change in the date of birth entered in the service record on 01.09.1982 and without affording opportunity of hearing to the petitioner. In such circumstances, the date of retirement of the petitioner settled by the respondents by taking into consideration 05.05.1950 as his date of birth is apparently bad. The respondents were under obligation to continue the petitioner in service till attaining the age of superannuation, i.e. of 60 years, by taking into consideration 20.04.1951 as his date of birth. On the basis of the date aforesaid, the petitioner could have not been (5) retired from service prior to 30.04.2011. In view of the discussion made above and for the reasons given, this petition for writ deserves acceptance. Accordingly, the same is allowed. The decision made by the respondents to retire the petitioner with effect from 31.05.2010 is declared illegal. The respondents are directed to treat 20.04.1951 as the date of birth of the petitioner and further to retire him on attaining the age of superannuation, i.e. of 60 years. As a consequent to the directions above, the petitioner shall be entitled for revision and re-determine all pensionary and other post retiral benefits. The revision necessary is directed to be made by the respondents within a period of two months from today and the arrears accruing, as such, are required to be paid to him within a period of one month thereafter. No order as to costs. [GOVIND MATHUR],J.

Pramod

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