

Court No. - 33

Case :- WRIT - A No. - 14455 of 2023

Petitioner :- Ram Prakas

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shailesh Verma, Aditya Prakash Verma

Counsel for Respondent :- C.S.C., Yashwant Singh

Hon'ble J.J. Munir, J.

Parties have exchanged affidavits.

Admit.

Heard forthwith.

Heard Mr. Aditya Prakash Verma, learned Counsel for the petitioner and Mr. Yashwant Singh, learned Counsel on behalf of respondent nos. 2 and 3.

The petitioner has challenged the order dated 17.03.2023 rejecting his claim to regard his date of birth as 01.01.1969 based on the Aadhar Card. He has prayed for a *mandamus* to reinstate him in service as he has retired on the basis of the date of birth recorded in his service book i.e. 20.08.1961. A further relief has been sought to extend him the benefit of the Assured Career Progression on completion of 34 years of service. Vide order dated 29.08.2023, the petitioner's service book was summoned and placed in a sealed cover in the custody of the Registrar General for production again, today.

This Court has looked into the entries in the service book. In column 5, the petitioner's date of birth is entered in pinkish red ink as 20.10.1961 just below the printed matter in the said column on the left side. On the right hand side an entry is made to the effect that petitioner was aged about 22 years on 20.10.1983. The impugned order shows that the petitioner's date of birth was entered as 22 years on 20.10.1983 on the basis of a medical report and on that basis the petitioner has been retired on 31.10.2021. Apparently, in the petitioner's service book that is how the petitioner's date of birth has been entered. The petitioner was a *Safai Karmi* and is apparently not literate. He does not have any educational or other records regarding his date of birth and it was for the said reason that he was examined by a Medical Board when recruited to determine his date of birth for the purpose of service records. His date of birth has been recorded accordingly in the service book. It is argued by Mr. Aditya Prakash Verma, learned Counsel that in response to an application under the Right to Information Act, made to the Nagar Swasthya Adhikari, who was the Public Information Officer for the establishment, a memo dated 25.11.2022 was addressed to the petitioner, where in answer to the second question it is said that there is no record about the convening of the Medical Board. In answer to the first question it is said that no Medical Board's meeting was found in the records related to the date i.e. 20.10.1983. The third question is also answered in the

same terms. No doubt, these answers cast a shadow of doubt about the Medical Board's meeting on 20.10.1983, to determine the petitioner's age but, the fact of the matter is that it is a long time since 20.10.1983, and in all this while, these records might have been weeded out or lost.

The other issue is that on the basis of the Medical Board's report dated 20.10.1983, the petitioner's age has remained entered in his service book during the entire period of time that he has been in employment. He has never raised this dispute early into service when it would have been resolved in a more contemporaneous context. Now, that the dust of time has gathered on records as well as memory, the petitioner has raised the issue as it is often called on the 'eve of his retirement'. Rather, he has gone beyond the evening and raised it in the dead of night, after he has retired.

This Court is not minded, therefore, to interfere with the impugned order, as doing so would be against the settled principle in such matters.

So far as the other relief regarding payment of the A.C.P. is concerned, it is averred in the paragraph no.4 of the personal affidavit filed by the Nagar Ayukta, Nagar Nigam Kanpur Nagar:

"4. That the deponent has forwarded the claim of the petitioner for payment of the arrears of ACP and Selection Grade and entire process of the payment of arrears will be completed within two weeks and thus Two week further time may be granted to the deponent by this Hon'ble Court."

In the circumstances, a *mandamus* is issued to the respondents directing them to complete the calculation for award of the A.C.P. and the Selection Grade as stated in paragraph no. 4 of the above-referred affidavit within two weeks hence and the necessary benefits be extended to the petitioner within two weeks thereafter.

The writ petition is **allowed in part**.

Let the service book of the petitioner be returned to Mr. Yashwant Singh, learned Counsel for its onward transmission to the respondents.

Let this order be communicated to the Principal Secretary, Department of Nagar Vikas Anubhag, Government of U.P., Lucknow, the Municipal Commissioner (Nagar Ayukta), Nagar Nigam, Kanpur Nagar and the City Health Officer, working under the Municipal Commissioner (Nagar Ayukta) Nagar Nigam, Kanpur Nagar by the Registrar (Compliance)

Order Date :- 16.10.2023/Vijay