

Court No. - 33**Reserved****Case :-** WRIT - A No. - 6311 of 2023**Petitioner :-** Dinesh Kumar**Respondent :-** State of U.P. through Principal Secretary,
P.W.D., Government of U.P., Lucknow and others**Counsel for Petitioner :-** Surya Mani Singh, Vireandra Kumar
Pandey**Counsel for Respondent :-** C.S.C.**Hon'ble J.J. Munir,J.**

1. This writ petition is directed against an order of the Executive Engineer, Provincial Division, Public Works Department, Civil Lines, Sitapur dated 17.07.2023, retiring the petitioner w.e.f. 30.09.2023, holding him to have reached the age of superannuation, on the basis of his date of birth being 21.09.1963.

2. The petitioner was appointed as a daily-wage *Beldar* with the Public Works Department, Sitapur (for short, 'the PWD, Sitapur) on 01.11.1985. His services were regularized against the post of a *Beldar* on 26.12.2010. The petitioner was last posted in the Establishment of the Executive Engineer, Provincial Division, PWD, Sitapur. It is the petitioner's case that he is illiterate and can barely sign his name. At the time of construction of his service-book, the petitioner was directed by the respondents to produce a document relating to his age. The petitioner, being literate, produced a medical certificate dated 21.09.1998 issued by the Chief Medical Officer, Sitapur, where the petitioner's age was mentioned as 27 years. This certificate is on record and photostat copies thereof have been attested by the Assistant Engineer, Provincial Division, PWD, Sitapur. On the foot of the said certificate issued by the Chief Medical Officer, Sitapur dated 21.09.1998, the petitioner's date of birth

was entered in his service-book as 27 years on 21.09.1998. Working out the petitioner's date of birth on the basis of his age assessed by the Chief Medical Officer on 21.09.1998 as 27 years, it would, according to the arithmetical calculation, be 21.09.1971. All that was entered in the relevant column of the petitioner's service-book, that was originally constructed, is that his age was 27 years on the basis of the medical certificate issued by the Chief Medical Officer, Sitapur dated 21.09.1998. There was no mention of any other date of birth.

3. It is pleaded by the petitioner that later on by doing a tampering of the entry in the petitioner's service-book, the date of the CMO's certificate was scored out in a different ink, making it '21.09.1990' for '21.09.1998'. A further entry was made in the service-book, also in different ink from that of the original entry, where a date of birth for the petitioner is mentioned as '21.09.1963', that was not at all there in the entry originally made. The petitioner says that the tampering and forgery about the petitioner's date of birth in his service-book is apparent, which is particularly distinguishable by a different hand in which the altered entry and scoring off has been done. As soon as the petitioner came to know of this tampering in his service-book, he submitted a representation to the Executive Engineer, Provincial Division, PWD, Sitapur on 25.07.2022, saying that according to the entry originally made in terms of the CMO's certificate dated 21.09.1998, estimating his age to be 27 years, the petitioner's date of birth would be 21.09.1971, which ought to be entered.

4. The Executive Engineer, Provincial Division, PWD, Sitapur sought opinion of the Law Officer, PWD, Central Zone, Lucknow *vide* his letter dated 22.10.2022. The Law Officer submitted her report dated 25.03.2023 to the Executive

Engineer, clearly opining that the certificate dated 21.09.1998 issued by the Chief Medical Officer, Sitapur certified the age of the petitioner as 27 years and on that basis, the petitioner's service-book had been constructed. It was also said that in the column of the date of birth, it had been mentioned "मुख्य चिकित्साधिकारी सीतापुर के प्रमाण पत्र दिनांक 21.09.1998 के आधार पर 27 वर्ष". The Law Officer further opined that after perusing the records what emerges is that the certificate issued by the Chief Medical Officer is one dated 21.09.1998 and not 21.09.1990, a fact that has also been certified by the Assistant Engineer. The Law Officer said that someone has mentioned the date '21.09.1990' in place of '21.09.1998' by changing the entry and on that basis the date of birth has been mentioned as 21.09.1963. The Law Officer also noticed that the writing of the subsequent entry altering the date of the CMO's certificate and mentioning the petitioner's date of birth are also written in different hands. She opined that all these facts show that the petitioner's date of birth in the service-book has been tampered with. The petitioner also says that his date of birth mentioned in the seniority list dated 12.11.2007 relating to daily-wagers is 25.12.1970, which approximates to the date of birth that would work out on the basis of the Chief Medical Officer's certificate dated 21.09.1998.

5. The petitioner's case is that his date of birth, as entered in his service-book originally on the basis of the Chief Medical Officer's certificate dated 21.09.1998, estimating him to be 27 years on that date, is the only date of birth, on the basis of which all rights of the petitioner would depend, including his date of superannuation. The petitioner says that after receiving the Law Officer's report dated 25.03.2023, the Executive Engineer did nothing to correct the tampered date of birth

entered in the petitioner's service-book. Instead, acting on the tampered date of birth, he has passed the order impugned, directing the petitioner's retirement on 30.09.2023.

6. Aggrieved, the petitioner has instituted the present writ petition.

7. A notice of motion was issued on 03.10.2023. A counter affidavit on behalf of the respondents was filed on 03.11.2023, to which the petitioner filed a rejoinder dated 07.11.2023. When this petition came up before the Court on 23.01.2024, this Court summoned the petitioner's service-book, directing the matter to be put up on 25.01.2024. On 25.01.2024, the service-book, which are two in number, that is to say, the one originally constructed and the latter being the second part, both were produced in original. These were taken on record and perused. The parties were finally heard on 25.01.2024 and judgment reserved.

8. Heard Mr. Surya Mani Singh along with Mr. Virendra Kumar Pandey, learned Counsel for the petitioner and Mr. Prakhar Mishra, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

9. In the counter affidavit, the stand taken is that the petitioner was enrolled on the muster roll on 01.11.1985 as a *Beldar*. In the petitioner's service-book, his date of birth is mentioned as 21.09.1963. It is next said that if the petitioner's case were accepted that according to the certificate of the Chief Medical Officer dated 21.09.1998, he was aged 27 years at the time of certification, reckoning it backwards, he would have been aged 14 years at the time he was enrolled as a daily-wager. It is then said that employing a person under 18 years of age in government service is prohibited as it would be a

violation of the child welfare laws. On the basis of all these reasonings, it is deduced that the petitioner's date of birth is 21.09.1963. It is next stated in paragraph No.7 that so far as the letter dated 21.09.1998 issued by the CMO is concerned, it was got clarified by the Executive Engineer, Provincial Division, PWD, Sitapur. The petitioner's certificate was sent to the CMO for verification with a request to clarify if the date of the medical certificate on the original in his records was available. The Executive Engineer was informed *vide* letter dated 29.09.2023 by the Chief Medical Officer's office that the office copy of the petitioner's certificate is no longer available in his records on account of being an old document. Therefore, verification was not possible.

10. It is next said that the petitioner's date of birth is mentioned in the records as 21.09.1963. It is averred that if the date of birth, according to the petitioner's case, is accepted to be 21.09.1971, on the basis of the CMO's certificate, it would lead to a difference of 8 years, which automatically raises suspicion. The allegations about tampering in the service-book have been refuted by saying that the petitioner's date of birth was verified by an Officer, who belongs to a different Section and, therefore, there is no reason for him to tamper the petitioner's service-book. So far as the Law Officer's opinion is concerned, privilege under Section 123 of the Indian Evidence Act has been claimed. It is pleaded that after the tentative seniority list, a final seniority list of *Beldars*, working in the regular Establishment, was issued by the Executive Engineer's office on 27.12.2019, which showed the petitioner's date of birth as 21.09.1963, to which the petitioner never objected. It is also the respondents' case that once objection about tampering in the records was raised by the petitioner, a Committee was

formed by a memo dated 17.08.2023. The Committee recommended the petitioner's date of birth to be 21.09.1963. It was on the basis of the recommendations of the Committee that the impugned order has been passed.

11. In the rejoinder, about the much cantankerous plea on behalf of the respondents that the petitioner, reckoned by the age that he urges as the one originally entered in the service-book, would be 14 years old at the time when he was enrolled on the muster roll, something prohibited in government service, that is to say, employing a person below the age of 18, it is averred in paragraph No.9 of the rejoinder:

"9. That against the objection in the counter affidavit as indicated at point 'A' of preceding paragraph 8, it is most respectfully submitted to this Hon'ble Court that muster role service is not government service, therefore the condition of minimum age at par to the Government service is not applicable.

The muster role service comes under the category of labour by virtue of under para **429 of the financial hand book Volume VI**, in which it has been enshrined that the all persons engaged departmentally for the execution of works are considered as **day labourers.....**"

The muster role service are under the category of labour, therefore labour laws are applicable and for labour the conditions of service **at par** to the Government Servant, either for minimum age or for other purpose are not applicable. The minimum age for labour are determined under the Child Labour (Prohibition and Regulation) Act, 1986 (**herein after referred to as Act, 1986**),

therein under section **2 (ii)** child means a person who has not completed his **fourteenth year of age** and under section **3** of the Act, 1986, the employment of children are prohibited in certain occupations.

Hence, it is obvious that the petitioner being assigned the work of **Labour** was above than **14** years of age on **01-11-1985** pursuant to his date of birth **25-12-1970** and was eligible for the job of muster role on **01-11-1985.....**"

12. Upon hearing learned Counsel for the parties and perusing the record, in particular, the first part of the service-book, that is the oldest, it is difficult to miss the obvious tampering in Column 5 relating to the petitioner's date of birth. The original entry, is in deep blue ink, which reads:

"मुख्य चिकित्साधिकारी सीतापुर के प्रमाण पत्र दिनांक 21.09.1998 के आधार पर 27 वर्ष"

13. There is a clear tampering of this entry, where the date of the CMO's certificate has been scored off by two strokes of pen and for the date '21.09.1998', the date entered is '21.09.1990'. There are two initials made on the scored out and changed entry of the CMO's certificate. In the column relating to the date of birth after the original entry, in a completely different blackish ink and different hand, the following words have been added:

"जन्मतिथि 21-9-1963"

14. Both these changes to the original entry are not done in red ink nor otherwise mention any order under the authority of which these changes were done. It is, therefore, difficult to accept the respondents' contention that the original entry made in deep blue ink in Column 5 of the petitioner's original service-book was not tampered. It has indeed been tampered.

15. The learned Counsel for the petitioner has relied upon the provisions of Rule 2 of the Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 (for short, 'the Rules of 1974'). Rules 2 and 3 of the Rules of 1974 read:

"2. Determination of correct date of birth or age.-The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where Government Servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time

of his entry into Government service, shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

3. Overriding effect.—These rules shall have effect, notwithstanding anything contrary contained in the relevant service rules or orders.”

16. There is no dispute in the present case that the petitioner is an illiterate man, who can barely sign his name. He is certainly not a matriculate or holds a High School certificate or an equivalent. Therefore, his date of birth recorded in the service-book at the time of entry into service has to be regarded as the correct date of birth for all purposes, including superannuation. The petitioner's service-book was constructed in the year 1998 and the entry made at that time has to be regarded as correct. It cannot be changed later on by dint of Rules 2 and 3 of the Rules of 1974. Though the petitioner was regularized in service on 26.12.2010, he was initially enrolled as a *Beldar* on 01.11.1985. For some reason, his service-book was constructed in the year 1998, may be because he was taken on the work-charged establishment earlier, about which there is no case, but whatever be the reason, there is no dispute that the petitioner's service-book was constructed in the year 1998 and at that time he was asked to furnish proof of his age, which of course he never had. It is for the said reason that he was sent or went to the CMO for his medical or age related examination and was opined to be 27 years by the CMO *vide* his certificate dated 21.09.1998. The CMO opined the petitioner, according to his certificate dated 21.09.1998, to be

aged 27 years. The petitioner's age in the service-book was clearly recorded as 27 years, according to the CMO's certificate dated 21.09.1998. It is this entry, to which the provisions of Rule 2 of the Rules of 1974, would attach and bring about finality. In this connection, reference may be made to my own holding in **Smt. Kalyani Devi v. State of U.P. and others, 2024 (2) ADJ 271.**

17. The defences urged on behalf of the respondents to dislodge the petitioner's case are hollow. The case that the petitioner would be 14 years' old if his date of birth were accepted as 27 years on the date of the CMO's certificate dated 21.09.1998 is stated to be rejected. The petitioner was employed as a muster roll employee or a labourer and a reference to the provisions of the **Child Labour Prohibition in Regulation 1986** clearly shows that the definition of a child under Section 2(ii) means a person, who has completed his 14th year of age. Under Section 3 of the Act of 1986, employment of children is prohibited in certain occupations. Here, the petitioner, going by his date of birth, was found by the CMO certainly to be 14 years plus on 01.11.1985, when he was enrolled as a *Beldar*. He was not appointed to government service on 01.11.1985, but taken in as a labourer, borne on the muster roll. Therefore, even if the petitioner was employed at a young age below 18 as a labourer, there is nothing so incompatible with the petitioner's case that his date initially entered in service-book may be discarded. There is absolutely no explanation coming forth from the respondents about the brazen tampering of the original entry as to the petitioner's date of birth. There is nothing to explain how the date of the CMO's certificate could be altered by the respondents scoring off the

date '21.09.1998' and substituting it by '21.09.1990', that could never have been done.

18. The photostat and attested copy of the certificate that is available on record clearly shows it to be one dated 21.09.1998. The CMO's office in answer to the Executive Engineer's query has not come up with information to say if the date of the certificate issued by the CMO and mentioned in the petitioner's service-book was indeed different. All that they say is that the record being old, is no longer available. The burden to dispel the date of birth mentioned in the CMO's certificate and entered in the service-book is upon the respondents, which they have not been able to discharge. The Committee, who have opined to alter the petitioner's date of birth from the one based on the original entry in the service-book, have acted without jurisdiction and in violation of Rules 2 and 3 of the Rules of 1974. The respondents had no jurisdiction to alter the petitioner's date of birth originally mentioned in the service-book, that is to say, 27 years on the date when the CMO issued his certificate dated 21.09.1998. On the basis of the said certificate, the petitioner's date of birth has to be regarded as 21.09.1971.

19. The petitioner has somewhere conceded that his date of birth is 25.12.1970. This is an admission against the petitioner's own interest and his case as well. The CMO's certificate is an approximation of the petitioner's age. In the clear opinion of this Court, therefore, the petitioner consistent with the original entry in the petitioner's service-book, can be safely inferred to have been borne on 25.12.1970, which would his date of birth. There is absolutely no way on the basis of which the petitioner's date of birth can be regarded as 21.09.1963. This Court is, indeed, surprised to find the way the respondents have tampered the

service-book. We are constrained to say that it is the respondents, who are the keepers and guardians of the employment record, including the service-book. It is they who have to explain every change, alteration or tampering therein. The respondents have not at all been able to explain all the crude tampering that has been done in the petitioner's service-book. We are, therefore, of opinion that the impugned order and the Committee's decision, on which it is based, are all manifestly illegal and liable to be quashed. The petitioner is entitled to continue in service on the basis of his date of birth being regarded 25.12.1970.

20. In the result, this petition succeeds and is **allowed**. The impugned order dated 17.07.2023 is hereby **quashed**. A mandamus is issued to the respondents to reinstate the petitioner in service forthwith and permit him to continue until he attains the age of superannuation in accordance with his date of birth being 25.12.1970. The petitioner would be entitled to all the arrears of his emoluments, including continuity and seniority in service between the dates that he was superannuated in terms of the impugned order and the date he is reinstated in service.

21. There shall be no orders as to costs.

22. Let the service-book in original be placed in a sealed cover by the Senior Registrar and caused to be transmitted to the Executive Engineer, Provincial Division, PWD, Civil Lines, Sitapur. The Senior Registrar shall further cause this judgment and order to be communicated to the Chief Engineer, PWD, Central Zone, Cariappa Road, Cantonment, Lucknow, the Superintending Engineer, Sitapur/ Lakhimpur Kheri Circle,

PWD, Batsganj, Sitapur and the Executive Engineer, Provincial
Division, PWD, Civil Lines, Sitapur.

Order Date :- 23.7.2024
Anoop/Lko

(J.J. Munir, J.)