

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.NO.36897 OF 2017

ORAL ORDER (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, petitioners – Union of India, challenged the order dated 19-12-2016 passed in O.A.No.020/00462/2014.

The respondent filed the aforesaid O.A. challenging recovery of an amount of Rs.5,25,951/- from his terminal benefits while issuing the Annexure A-1 Pension Payment Order dated 11.06.2013. The respondent also sought for a direction, directing the petitioners to release the amount of Rs.5,25,951/- with interest at 18% per annum.

The case of the respondent is that he joined the petitioners – Department as Gangman on 19.03.1979. While working as Gangman, as he had no proper record of his date of birth in the form of educational certificates, he was directed to submit an affidavit regarding his date of birth. Accordingly, he submitted Annexure-A III affidavit dated 24.08.1985 stating that his date of birth to the best knowledge of his parents is 28.06.1952. This date has been taken as his date of birth in all the official records including service book, identity card, pay slips and gradation list. The said date of birth of the respondent was continued in the official records of the petitioners - department till 05.06.2012. While so, the 2nd petitioner issued Annexure A – V letter dated 05.06.2012 stating his date of birth had been originally recorded as 28.06.1950 and that the same was altered as 28.06.1952, without obtaining the prior approval of the competent authority. Therefore, a direction was given to take necessary action to retire him immediately from service and submit his settlement papers duly recovering the over payment of wages for the period beyond

his original date of superannuation on 01.07.2010. Pursuant to the said letter, the 4th petitioner retired the respondent from Railway service on 06.06.2012 without verification of the facts and without any notice to the respondent. The respondent submitted his settlement papers on his own on 28.05.2012 to the Accounts Wing. From the correspondence between the authorities, it was understood that they were proposing to recover an amount of Rs.5,30,000/- towards pay and allowances of the respondent from 01.07.2010 to 06.06.2012. Therefore, he immediately submitted representation on 17.06.2012. The petitioners, without any prior notice and in absolute violation of principles of natural justice, recovered the entire amount of Rs.5,01,609/- from his terminal benefits. In addition, they also adjusted another amount of Rs.35,672/- due to him towards dearness relief on the ground of over payment of pay.

Learned Tribunal after considering the rival contentions of the parties, held that the petitioners failed to produce any documentary evidence to show that the respondent had given a wrong declaration of his date of birth as 28.06.1952 and that his affidavit was wrong. They have also failed to show that the respondent had given a different date of birth at the time of his employment as casual labour / CMR. The Tribunal further held that if reliance has to be placed on the medical certificate of the Divisional Medical Officer, Kazipet, the petitioners should have resorted to the course of action envisaged under Annexure R-II instructions under Rule 225. The same are extracted as under for better appreciation:

“225.(1)xxx

(2) xxx

(3)(a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.”

However, that has not been done by the petitioners. Therefore, the Tribunal directed the petitioners to release the amount of Rs.5,25,951/- recovered from the terminal benefits of the respondent, within a period of two months from the date of receipt of a copy of the order.

The present petition is filed on the ground that the learned Tribunal ought to have seen that the date of birth of the respondent was originally recorded as 28.06.1950 and it ought to have seen that the affidavit alleged to have been filed by the 1st respondent on 24.08.1985, is not with prior consent of the competent authority.

The learned counsel appearing on behalf of the petitioners submit that the respondent has to retire on 30.06.2010, whereas, he has over stayed in service up to 06.06.2012. Therefore, the question of retiring him forcibly on 06.06.2012 does not arise. In terms of RB Lr.No.E(G)97RT1-1 dated 07.07.1999, an amount of Rs.5,25,951/- has to be recovered from out of his settlement dues and the same was recovered from his settlement benefits towards salary paid for the entire period of overstay. Thus, the order passed by the Tribunal deserves to be set aside.

The only contention of the petitioner is that the date of birth of the respondent was originally recorded as 28.06.1950 and the same has been altered as 28.06.1952 without following the rules and without approval of the competent authority.

The learned Tribunal on perusal of relevant pages of service register of the respondent found that at one place the date of birth of the respondent has been unmistakably shown as 28.06.1952 and at another

place in the same page, the date of birth has been corrected as 28.06.1952 by certain over writings. The evidence, on which the petitioners have concluded that the respondent's date of birth is 28.06.1950, is not furnished anywhere. There is incontrovertible evidence that the respondent had filed an affidavit in the year 1985 to the effect that his date of birth is 28.06.1952 and the original affidavit is available in the service register. However, the petitioners failed to produce any documentary evidence to show that the respondent had given a wrong declaration of his date of birth as 28.06.1952 and that his affidavit was wrong. The petitioners also failed to show that the respondent had given a different date of birth at the time of his employment as casual labour / CMR. Moreover, the petitioners failed to adopt the procedure under Rule 225 noted above.

In view of the above discussion, we find no illegality or perversity in the order passed by the learned Tribunal. Consequently, we hereby maintain the same.

Finding no merit in the instant petition, the same is dismissed.

Petitioners are directed to release the amount of Rs.5,25,951/- recovered from the terminal benefits of the 1st respondent, within a period of four weeks from today.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

DATE: 24-01-2018
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