

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(249)

CWP-22041-2022

Date of Decision : November 10, 2022

Manha Ram

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Jain, Advocate and
Ms. Kannupriya, Advocate, for the petitioner.

Mr. Sandeep Singh Maan, Additional Advocate General,
Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Reply on behalf of respondents No. 1 to 4 has been filed in the Court today and the same is taken on record.

In the present petition, the grievance of the petitioner is that though in the service book, the date of birth of the petitioner has been recorded as 01.01.1964 but, the petitioner has been retired on 31.07.2022 on the ground that in the seniority list, the date of birth has been mentioned as 01.07.1962.

As per the argument of the petitioner, the date of birth recorded in the service book is to be taken into account for retiring the petitioner and not the date recorded in the seniority list.

Further prayer of the petitioner is that even for retiring the petitioner on the basis of the date of birth mentioned in the seniority list, the petitioner was required to be given an opportunity of hearing as the change of date of birth causes prejudice to the petitioner and no order causing prejudice to the petitioner can be passed without giving opportunity of hearing.

After notice of motion, the respondents have filed the reply wherein, the respondents have stated that there are multiple documents which have been submitted by the petitioner giving different date of birth. As per the respondents, the service book of the petitioner records the date of birth of the petitioner as 01.01.1964 but the seniority list, which was issued in the year 2003 records the date of birth as 01.07.1962.

Further, as per the reply, the Aadhar Card of the petitioner shows his date of birth as 01.01.1965 whereas the record in the New Pension Scheme show his date of birth as 01.01.1967, hence, as documents submitted by the petitioner show different date of birth, the petitioner was retired by picking up the date of birth as mentioned in the seniority list.

In the reply, it has been conceded by the respondents that no opportunity of hearing was given to the petitioner before retiring by taking 01.07.1962 as his date of birth, which is inconsistent with the date of birth as recorded in the service book.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position that in the service book, the date of birth of the petitioner has been recorded as 01.01.1964. Once the said date of birth has been recorded, the same has to be taken into consideration

unless and until, the respondents find that the said date of birth is not recorded correctly keeping in view the various other documents which have come on record for the consideration of the Department. Even for the said purpose, in case the date of birth of the petitioner as recorded in the service book needs to be changed, the opportunity of hearing is must to the petitioner keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.9417 of 2019 titled as M/s. Daffodils Pharmaceuticals Limited and another vs. State of U.P and another, decided on 13.12.2019.*** Relevant paragraph of the said judgment is reproduced as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities, that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.”

Keeping in view the above, as no opportunity of hearing was given to the petitioner before taking action against the petitioner on the basis of a date of birth as recorded in a document other than service book, the action of the respondents in retiring the petitioner by taking into consideration the date of birth as recorded in the seniority list instead of date of birth mentioned in the service book, is held to be bad and is accordingly

quashed.

However, the respondents are given liberty to ascertain the correct date of birth of the petitioner in case they intends to do so but the same be done after giving due opportunity of hearing to the petitioner and the said order, if required to be passed, be passed in accordance with law. As the petitioner remained out of service w.e.f. 01.07.2022 onwards and retiring the petitioner by placing reliance upon the date of birth mentioned is held to be bad, the petitioner be reinstated forthwith along with arrears of salary but the said reinstatement will be subject to the liberty to the Department to pass appropriate order, if felt necessary.

The present writ petition is allowed in above terms.

November 10, 2022

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes